United States Court of Appeals

for the Second Circuit

APPENDIX

ORIGINAL

77-7183

United States Court of Appeals

For the Second Circuit.

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of WEIS SECURITIES, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,
Plaintiffs-Appellants,

against

TOUCHE ROSS & CO.,
Defendant-Appellee.

JOINT APPENDIX.

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(1922)

JUL 12 1977
SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

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EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs-Appellants,

-against-

TOUCHE ROSS & CO.,

Defendant-Appellee.

- -X

DOCKET ENTRIES.

Date	Proceedings
1976	
4-30	Filed complaint. Issued summons.
5-20	Filed summons with marshals return. SERVED: TOUCHE ROSS & CO. on 5-12-76.
6-07	Filed stp & order that the time of deft to answer etc, is extended to 6-23-76, Wyatt, J.
6-09	Filed Notice that pltff will take deposition of Karl Brunhuber on 6-21-76 as indicated.
7-12	Filed Stip & Order that the time for dft. to answer complaint is extended to 7-13-76..... Ward J.
7-21	Filed Notice of Appearance of Rosenman Colin Freund Lewis & Cohen. as indicated.
7-23	Filed pltffs first set of interrogatories.

Date	Proceedings
7-27	Filed stip & order that the time for deft to move etc, is extended to 9-15-76, etc, as indicated. Conner J.
8-24	Filed defts objections and answers to interrogatories to pltff.
9-07	Filed pltffs Affidavit & Notice of motion for an order striking defts blanket objections to pltffs first set of interrogatories, etc, as indicated rtble before Mag. Schreiber on 9-21-76.
9-07	Filed pltffs memorandum of law as indicated.
9-22	Filed defts Affidavit & Notice of Motion for an order dismissing this action etc, as indicated rtble on 10-1-76.
9-22	Filed memorandum of deft Touche Ross & Co. in support of motion to dismiss, etc, as indicated.
9-23	Filed stip & order that the deposition of Karl Brunhuber is adjourned to 10-20-76, and pltffs motion is adjourned to a mutually convenient date to be determined after consultation with Mag. Schreiber. Wyatt, J.
9-30	Filed defts Affidavit in opposition to the motion of the pltffs etc, as indicated.
9-30	Filed defts memorandum in opposition to pltffs motion to compel further discovery.
11-15	Filed stip & order that pltffs shall have to 1-7-77 to serve papers with respect to defts motion of 9-15-76 to dismiss or stay this action etc, as indicated, Wyatt, J.
1977	
1-10	Filed affidavit in opposition to motion to dismiss.
1-10	Filed pltffs memo in opposition to motion to dismiss.

Date	Proceedings
1-10	Filed memorandum of pltff's Securities Investor Protection Corp. in opposition to defc's motion to dismiss.
1-10	Filed pltff's Securities Investor Protection Corp. affdvt. in opposition to deft's motion to dismiss complaint.
2-07	Filed defts. reply affdvt. to dismiss the complaint and for related relief.
2-07	Filed defts. reply memorandum of deft. Touche Ross & Co., in support of motion to dismiss and for related relief.
2-14	Filed Pltffs. Redington, sur-reply memorandum of law.
3-01	Filed Opinion #45650 There can be no jurisdiction simply because SIPC was created by Act. of congress because there is no stock ownership in SIPC by the United States. Finally, the Trustee is a citizen of New York and is a pltff. along with SIPC. Partners of Touche, the deft. are citizens of N.Y. Thus, there is no complete diversity of citizenship within the rule of Strawbridge v. Curtiss, 3 Cranch 267 (1806). The fifth, sixth, seventh, and eight claims of SIPC must be dismissed for lack of jurisdiction over the subject matter.....So Ordered...WYATT, J. Settle order and judgment on notice. m/n
3-15	Filed Order & Judgment this action is dismissed, and deft. have judgment against pltffs, and each of them, dismissing this action...So Ordered.....WYATT, J. Judgment Ent. on 3-15-77 ...m/n
4-13	Filed Pltffs. Edward S. Redington, notice of appeal to the U.S.C.A. from the order & Judgment Ent. in this action on the 15th day of March 1977.. Mailed All Copies.

Date	Proceedings
4-14	Filed Pltffs. Securities Investor Protection Corp. notice of appeal to the U.S.C.A. from the order & Judgment Ent. in this action on the 15th day of March 1977...Mailed all copies.
5-13	Filed stipulation designating a copy of an originally filed document to become part of the record on appeal.

COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	76 Civ. 1981 (IBW)
Plaintiffs,	:	COMPLAINT
-against-	:	
TOUCHE ROSS & CO.,	:	PLAINTIFFS DEMAND A TRIAL BY JURY
Defendant.	:	

- x

Plaintiffs EDWARD S. REDINGTON, Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, by their respective attorneys, complaining of the Defendant, allege as follows:

JURISDICTION AND VENUE

1. This action arises under the Securities Exchange Act of 1934 (15 U.S.C. Sections 78a et seq.) (hereinafter the "1934 Act") and particularly under Section 17 thereof (15 U.S.C. Section 78q), the Securities Investor Protection Act of 1970 (15 U.S.C. Section 78aaa et seq.) (hereinafter the "1970 Act"), and the common law.

2. This Court has jurisdiction over Plaintiff Redington's claims by virtue of Section 27 of the 1934 Act (15 U.S.C. Section 78aa); Section 6 of the 1970 Act (15 U.S.C. Section 78fff); Sections 2a(7), 102 and 115 of the Bankruptcy Act (11 U.S.C. Sections 11a(7), 502 and 515); Sections 1331 and 1334 of the United States Judicial Code (28 U.S.C. Sections 1331 and 1334); and principles of pendent jurisdiction. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

3. This Court has jurisdiction over the claims of Plaintiff Securities Investor Protection Corporation by virtue of Section 27 of the 1934 Act (15 U.S.C. Section 78aa), Sections 1331 and 1332 of the United States Judicial Code (28 U.S.C. Sections 1331 and 1332), and principles of pendent jurisdiction. The amount in controversy, exclusive of interest and costs, exceeds the sum of $10,000.

4. Defendant has its principal place of business in this District and most of the acts alleged herein occurred in this District.

PARTIES

5. Plaintiff Edward S. Redington (hereinafter the "Trustee"), pursuant to the 1970 Act, was duly appointed by Order of this Court dated May 30, 1973 as Trustee for the liquidation of the business of Weis Securities, Inc. ("Weis"), has duly qualified, and is presently acting in such capacity. Section 6(b)(1) of the 1970 Act (15 U.S.C. Section 78fff(b)(1)) provides that a trustee appointed under the 1970 Act shall be vested, inter alia, with the same powers and title with respect to the debtor and the property of the debtor as a trustee in bankruptcy and a trustee under Chapter X of the Bankruptcy Act (11 U.S.C. Sections 501-676) have with respect to a bankrupt and a Chapter X debtor.

6. Plaintiff Securities Investor Protection Corporation (hereinafter "SIPC") is a non-profit membership corporation created by and organized under the 1970 Act whose members are, with certain statutory exceptions, all persons registered as broker-dealers under Section 15(b) of the 1934 Act (15 U.S.C. Section 78o(b)) and, with certain statutory exceptions, all persons who are members of a national securities exchange. SIPC has its principal place of business in the District of Columbia. At all relevant times Weis was a member of SIPC.

7. Defendant Touche Ross & Co. ("Touche Ross") is a partnership of certified public accountants with its principal place of business at 1633 Broadway in the City, County and State of New York. In or about 1969 Touche Ross was engaged by Weis as its independent certified public accounting firm, and Touche Ross continued to act in such capacity from about 1969 until about May 1973, when the forced liquidation of Weis commenced.

COMMON ALLEGATIONS

8. At all relevant times prior to May 30, 1973, Weis was a corporation registered as a broker-dealer with the Securities and Exchange Commission (the "SEC") and was engaged in the business of a broker-dealer in securities. From June 1965 until May 1973, Weis was a member of the New York Stock Exchange, Inc. (the "Exchange"), the self-regulatory organization designated by SIPC to examine Weis for compliance with the applicable financial responsibility rules which are imposed on broker-dealers pursuant to Section 6 of the 1934 Act (15 U.S.C. Section 78f) for the protection of the public as a minimum prerequisite for conducting a securities brokerage business.

9. For each of its four fiscal years 1968 through 1971 (ended May 31), Weis' audited financial statements reflected a profit. During early 1972 five of Weis' officers (the "Weis Five") became increasingly concerned that a fair and accurate presentation of Weis' results of operations for fiscal year 1972 would reflect that Weis was operating at a loss.

10. The Weis Five misstated the financial condition and results of operations of Weis in financial reports prepared at fiscal year-end 1972. These reports were required to be filed with regulatory authorities pursuant to Section 17 of the 1934 Act (15 U.S.C. Section 78q) and were directly or indirectly submitted to Weis, its Board of Directors, the SEC, SIPC, the Exchange, and

Weis' customers, creditors, lenders and shareholders. Such misstatements were accomplished, by inter alia, materially overstating assets, creating non-existent assets, understating liabilities, overstating income, and understating expenses. The purpose and effect of such material misstatements were, inter alia, to create a false impression that Weis' earnings for the fiscal year ended May 26, 1972 were $1,700,000 before taxes whereas in truth and in fact Weis had actually suffered losses in that period in excess of $1,500,000.

11. Had Weis' actual financial condition, its actual results of operations, and the misstatements in its books and records been truthfully reported at the end of Weis' 1972 fiscal year, Weis' 1973 forced liquidation under the 1970 Act would not have become necessary, and most if not all of Weis' assets and its good will as a going concern could have been preserved by a number of means including, inter alia, change in Weis' management, reversal of its policy of growth and expansion, curtailment or contraction of certain of its operations and business practices, gradual liquidation of some or all of its operations, or merger with another securities firm. Moreover, if a liquidation of Weis had been necessary as the result of such truthful reporting, such liquidation could have occurred at the end of Weis' 1972 fiscal year, when its assets were greater and the aggregate of its liabilities was lower than a year later.

12. The incorrect and incomplete fiscal 1972 year-end reports prepared by or under the direction of the Weis Five were certified by Touche Ross as being correct and complete. Consequently, the doctoring of Weis' books, records and required reports, the deterioration of its financial condition and the violations of financial responsiblity rules could not be nipped in the bud at a time when a forced liquidation of Weis could still have been avoided. Instead, during Weis' fiscal year 1973, Weis'

financial condition deteriorated further as the Weis policy of expansion continued unabated. Weis incurred substantial operating losses, depletion of its assets, and depletion of the property held by Weis in trust for its customers. The Weis Five continued to make false and fictitious entries in Weis' books and records, and continued directly or indirectly to submit false reports to Weis, its Board of Directors, the SEC, SIPC, the Exchange, and Weis' customers, creditors, lenders and shareholders in order to conceal Weis' true financial condition.

13. Not until April and May of 1973, as a result of separate investigations by the Exchange and the SEC, did the misstatement of Weis' financial condition come to light. These investigations gradually revealed violations of financial responsibility rules, Weis' unsafe, unsatisfactory and deteriorating financial condition, and the lack of accuracy and reliability of any of its financial statements, including those certified by Touche Ross. These revelations and the resulting uncertainties with respect to Weis' true financial condition prevented it from being saved as a going concern or being merged with another, financially more secure, brokerage firm, and resulted in Weis' forced liquidation under the 1970 Act.

14. On May 24, 1973, the SEC commenced an action in this Court (73 Civ. 2332) against Weis and the Weis Five for injunctive relief to prevent them from conducting the business of Weis in violation of the 1934 Act and the rules and regulations promulgated thereunder. Also on May 24, 1973 (the "Filing Date"), pursuant to Section 5(a)(2) of the 1970 Act (15 U.S.C. Section 78eee(a)(2)), SIPC applied in this Court for a decree adjudicating that the customers of Weis were in need of the protection of the 1970 Act. On May 30, 1973 (the "Date of Adjudication") such a decree was granted, the liquidation of Weis was ordered, and Plaintiff Edward S. Redington was appointed trustee for the liquidation of the business of Weis.

15. Upon the entry of the decree referred to in the preceding paragraph, SIPC was required by the 1970 Act to provide, and did provide to the Trustee, funds for the payment of claims submitted by customers and certain other creditors of Weis and for certain administrative expenses of the liquidation.

16. At all relevant times, Defendant Touche Ross held itself out to Weis, the SEC, SIPC, the Exchange and the general public as possessing the ordinary skill, ability and expertise of certified public accountants in accounting and auditing matters, and as being qualified, inter alia, (i) to examine and audit the books, records and accounts of firms engaged in the securities business in accordance with generally accepted auditing standards, (ii) to express opinions with respect to the financial statements of such firms as fairly reflecting their financial condition and results of operations in accordance with generally accepted accounting principles, and (iii) to prepare and assist in the preparation of the reports concerning such books, records, accounts and opinions required by Section 17 of the 1934 Act (15 U.S.C. Section 78q, and the rules and regulations promulgated thereunder. Touche Ross further held itself out as being familiar with accounting and auditing practices and standards required by the SEC and the Exchange for firms engaged in the securities business.

17. From approximately 1969 until the Date of Adjudication, Touche Ross was engaged by Weis for valuable consideration to serve as Weis' independent certified public accounting firm. During this period Touche Ross agreed to conduct annual audits of the affairs of Weis and to issue opinions and prepare reports on its financial statements, all in accordance with Section 17 of the 1934 Act (15 U.S.C. Section 78q), generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the SEC and the Exchange. In accepting said engagement, Touche Ross agreed to perform said services in a thorough, proper, skillful and diligent manner.

18. Weis and its Board of Directors, customers, creditors, lenders and shareholders, and the SEC, the Exchange and SIPC relied on Touche Ross to apply the standards and expertise, to express the opinions, to make the certifications and to prepare or assist in the preparation of the reports discussed in paragraphs 16 and 17, supra, for the purposes, among others, of (i) protecting Weis from fraudulent activity of its officers, directors, agents, and employees; (ii) safeguarding the existence and use of Weis' assets; (iii) assuring the accuracy of financial data submitted directly or indirectly to the Exchange, the SEC and SIPC, and generally made available to the public; (iv) determining whether Weis could continue to engage in business as a broker-dealer in securities; (v) determining whether or not significant restrictions and alterations in the scope and nature of its operations would be required in order for Weis to continue to engage in business as a broker-dealer; and (vi) making informed business decisions concerning the future operations of Weis on the basis of accurate financial information.

19. In or about late 1971 or early 1972, Touche Ross agreed with Weis to perform the aforementioned auditing and accounting services for the year 1972. Among other things, Touche Ross agreed (a) to prepare, cause to be prepared, and assist in the preparation of financial statements of Weis and to issue opinion letters with respect to said statements; (b) to audit the affairs of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations promulgated by the Exchange and the SEC pursuant to Sections 6 and 17 of the 1934 Act (15 U.S.C. Sections 78f and 78q); (c) to notify the Exchange promptly that such audit had been commenced; (d) to prepare an answer to the financial questionnaire (the "Answers to the Financial Questionnaire") of the Exchange based upon said audit; (e) to submit to the Exchange (i)

a copy of the Answers to the Financial Questionnaire, (ii) an attestation that the requirements of the audit regulations had been observed in the conduct of the audit, and (iii) a statement that Touche Ross had made a review of Weis' accounting system, internal accounting control, and procedures for safeguarding securities; (f) to furnish to the Exchange comments relative to any material inadequacies found to exist in Weis' accounting system, internal accounting control, and procedures for safeguarding securities; and (g) to indicate any corrective action taken or proposed.

20. Weis' employment of Touche Ross as its independent certified public accounting firm was not merely a matter of private contract between Weis and Touche Ross, but was required by the Exchange pursuant to its duty under Section 6 of the 1934 Act (15 U.S.C. Section 78f) to regulate its members' conduct of their businesses and supervise their financial condition for the benefit of the public. Touche Ross knew or should have known that Weis' engagement of an independent certified public accounting firm was a requirement of the Exchange and that it was for the benefit both of Weis in making decisions with respect to the operation of its business and of persons other than Weis.

21. Touche Ross' examination of and report on Weis' financial condition were not intended solely for the benefit of Weis but were, pursuant to Section 17 of the 1934 Act (15 U.S.C. Section 78q) and the rules and regulations promulgated thereunder, intended for and submitted directly or indirectly to, inter alia, the SEC, the Exchange, SIPC, and Weis' customers, creditors, lenders and shareholders. The Exchange was the organization designated and relied upon by SIPC to examine Weis for compliance with the applicable financial responsibility rules and to alert SIPC of Weis' financial difficulty.

22. Touche Ross knew or should have known that its examination of and report on Weis' financial condition were a

requirement of Section 17 of the 1934 Act (15 U.S.C. Section 78q) and the rules and regulations promulgated thereunder, and were for the benefit both of Weis and of persons other than Weis.

23. In accordance with its engagement agreement, Touche Ross purported to conduct an audit of Weis' books and records for the fiscal year ended May 26, 1972 and in connection therewith (a) certified, prepared, caused to be prepared, and assisted in the preparation of financial statements of Weis; (b) certified and prepared Weis' Answers to the Financial Questionnaire; and (c) issued four opinion letters (the "1972 Opinion Letters") to the Board of Directors of Weis dated, respectively, July 7, 1972, July 7, 1972, July 21, 1972 and July 21, 1972.

24. By means of the foregoing, Touche Ross represented and certified that it had examined (i) the statement of Weis' financial condition as of May 26, 1972, (ii) Weis' Answers to the Financial Questionnaire as of May 26, 1972, (iii) Weis' consolidated balance sheet for the 52 weeks ended May 26, 1972, and (iv) Weis' consolidated statement of earnings for the five years ended May 26, 1972. The letter pertaining to the Answers to the Financial Questionnaire stated that the Touche Ross examination had been made "in accordance with generally accepted auditing standards, and accordingly included a review of the accounting system, internal accounting control and the procedures for safeguarding securities including such tests thereof . . . as [Touche Ross] considered necessary in the circumstances, including the audit procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission." The letter also stated that the Answers to the Financial Questionnaire presented fairly the financial position of Weis at May 26, 1972 in the form prescribed by the Exchange and the SEC in conformity with generally accepted accounting principles applied on a consistent basis. Each of the other three 1972 opinion letters stated that the

Touche Ross examination had been conducted in accordance with generally accepted auditing standards and that the aforementioned financial statements presented fairly the financial position of Weis and subsidiaries at May 26, 1972, and the results of operations and changes in their financial position for the year and the five years then ended, in conformity with generally accepted accounting principles applied on a consistent basis. (The 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements are annexed hereto as Exhibits A, B, C and D.)

25. Touche Ross knew, should have known and intended that Weis and its Board of Directors would rely on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements for various purposes, including those set forth in paragraph 18, supra.

26. Touche Ross knew, should have known and intended that the SEC, the Exchange and SIPC would rely on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements in carrying out their respective regulatory, supervisory and protective duties with respect to Weis, in determining whether Weis was in compliance with the applicable financial responsibility rules, and in determining whether Weis was in financial difficulty.

27. Touche Ross knew, should have known and intended that Weis' customers, creditors, lenders and shareholders would rely directly or indirectly on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements in making decisions whether to commence or continue their respective relationships with Weis.

28. Touche Ross breached and failed to perform its agreement and obligation to render auditing and accounting services with respect to Weis in a thorough, proper, skillful and

diligent manner and performed said services in a negligent, reckless, careless, unskilled and grossly negligent manner in that, among other things, it:

a. failed to audit, verify and examine the books, records, accounts and financial statements of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC;

b. failed to prepare, cause to be prepared, and assist in the preparation of accurate financial statements of Weis and Weis' Answers to the Financial Questionnaire;

c. rendered the 1972 Opinion Letters, which were false, inaccurate and incomplete;

d. failed properly to test, study and evaluate Weis' system of internal accounting control;

e. failed to obtain competent evidential matter sufficient to afford a proper basis for the 1972 Opinion Letters;

f. falsely certified that it had examined Weis' books and records in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and SEC; and

g. failed to inform or otherwise alert Weis, its Board of Directors, the SEC and the Exchange (and, through the Exchange, SIPC) (i) of the material errors in Weis' Answers to the Financial Questionnaire and in Weis' financial statements prepared in connection with the 1972 Touche Ross audit; (ii) of the existence of inaccurate and unreliable books and records with respect to Weis; or (iii) of the possibility that Weis was facing financial difficulty.

29. Specifically, among other things, Touche Ross failed properly to audit, verify and examine:

(a) the Scheinman Hochstin & Trotta liquidation omnibus account [illegible] "SH&T Omnibus Account"), a claimed asset of $745,000. If Touche Ross had audited, verified and examined the SH&T Omnibus Account in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the [illegible] would have discovered the following:

(1) that in or about April 1972 the SH&T Omnibus Account had been debited in the amount of approximately $625,000;

(2) that, contrary to generally accepted accounting principles, the offsetting credits for this debit were to one or more income accounts;

(3) that the purpose and effect of these improper credits were to overstate Weis' gross income by approximately $625,000 and its net income and net worth by approximately $312,500; and

(4) that an overstatement by this amount was a material overstatement because it constituted over 30% of Weis' claimed net income for the entire fiscal year ended May 26, 1972 and over [illegible] of Weis' claimed net worth as of that date.

(b) the Winslow, Cohu & Stetson ("WC&S") insurance claim receivable, a claimed asset of $1,285,000. If Touche Ross had audited, verified and examined the WC&S insurance claim receivable in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC, it would have discovered the following:

(1) that, on or about May 8, 1972, the WC&S insurance claim receivable had improperly been increased in value (debited) from $600,000 to $785,000 because of interest purportedly payable on the claim;

(2) that, on or about May 25, 1972, the WC&S insurance claim receivable had improperly been further increased in value (debited) to $1,285,000 because of a purported increase in the value of the claim;

(3) that, contrary to generally accepted accounting principles, the offsetting credits for these two debits had been made to various income accounts;

(4) that the purpose and effect of these improper transactions were to overstate Weis' gross income by approximately $685,000 and its net income and net worth by approximately $342,500;

(5) that an overstatement by this amount was a material overstatement because it constituted nearly 35% of Weis' claimed net income for the entire fiscal year ended May 26, 1972 and approximately 4.5% of Weis' claimed net worth as of that date.

(c) other false, fraudulent and improper entries, irregularities and accounting transactions in the books of Weis which included, inter alia, the following:

(1) The re-depositing into income accounts of at least $800,000 worth of checks which were purportedly drawn to pay vendors or other creditors, thus overstating Weis' net income and net worth by at least $400,000;

(2) The doubling (to approximately $432,000) of accrued commission income for May 22-2 , 1972, thus overstating Weis' net income, net worth, and net capital by approximately $1[illegible],000;

(3) The improper crediting of income accounts with proceeds from a sale-leaseback transaction, thus overstating Weis' net income and net worth;

(4) The improper transfer of certain short security positions to dividend receivable accounts;

(5) The improper failure to record certain liabilities of Weis on the books of Weis;

(6) The manipulation of certain error accounts to reflect false credit balances of $100,000 to $200,000, which then were taken into income, thus overstating Weis' net income, net worth and net capital by approximately $50,000 to $100,000;

(7) The improper designation of up to $500,000 worth of miscellaneous receivables as "current" so that it

> was not necessary to deduct them from capital in computing Weis' net capital ratio under Exchange Rule 325, with the result that Weis' net capital ratio was made to appear to be below 10:1 and Weis thus was not precluded by Exchange Rule 326 from expanding its business.

30. Upon the discovery by Touche Ross of any one or more of the false entries or improper accounting transactions discussed in paragraph 29 above, Touche Ross would have had an obligation to report such discoveries, inter alia, to Weis, its Board of Directors, the SEC and the Exchange (and, through the Exchange, SIPC); and it would have had an obligation to report such discoveries in the 1972 Opinion Letters and to refrain from issuing the 1972 Opinion Letters in the form they actually took.

31. As a direct and proximate result of Touche Ross' failure to conduct the 1972 audit of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC:

a. the acts of the Weis Five as set forth in paragraphs 10 through 13 herein were not promptly discovered, and the Weis Five were able to continue to make false and fictitious entries in Weis' books, records and financial statements in order to conceal Weis' true financial condition during its fiscal year 1973;

b. other misstatements and inaccuracies in Weis' books, records and financial statements were not discovered;

c. Weis, its Board of Directors, the Exchange, the SEC, SIPC, and Weis' customers, creditors, lenders and shareholders were misled by Touche Ross into believing or assuming that as of May 26, 1972 Weis was in sound financial condition and in compliance with applicable financial responsibility rules;

d. Weis, its Board of Directors, the Exchange, the SEC and SIPC were prevented from (i) knowing the true financial condition of Weis, (ii) performing their respective duties to safeguard the assets of Weis and the property Weis was holding in trust for its customers, (iii) taking and causing to be taken appropriate and immediate remedial action at a time when a forced liquidation of Weis under the 1970 Act could have been prevented, and (iv) taking or causing to be taken appropriate and immediate action to avoid or reduce the costs of satisfying the claims of Weis' customers;

e. the acts of the Weis Five as set forth in paragraphs 10 through 13 herein were not discovered by Weis, its Board of Directors, the SEC, SIPC or the Exchange until April and May 1973 at which time the only remedial action that could be taken was the forced liquidation of Weis under the 1970 Act, which caused and continues to cause substantial injury to Weis and SIPC as well as Weis' customers, creditors, lenders and shareholders;

f. the assets of Weis and the property Weis was holding in trust for its customers were not on the Filing Date or thereafter sufficient to satisfy the claims of Weis' customers, creditors, lenders and shareholders;

g. Weis was unable to comply with the minimum financial responsiblity rules which would allow it to conduct its business as a broker-dealer in securities, was unable to restore itself to a condition in which it could remain in business, and lost the value of its business and assets as a going concern;

h. the assets of Weis were wasted and mismanaged; and

i. Weis was caused to undertake financial obligations which it could not satisfy and which it would not or could

not have undertaken had its true financial condition as of May 26, 1972 been known to Weis and its Board of Directors, the SEC, the Exchange and SIPC.

AS AND FOR PLAINTIFF TRUSTEE'S
FIRST CAUSE OF ACTION

32. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

33. As a result of the errors and omissions of Touche Ross, including those set forth in paragraphs 28 through 30 herein, Touche Ross violated, and aided and abetted the Weis Five in violating, Section 17 of the 1934 Act (15 U.S.C. Section 78q) and the rules and regulations promulgated thereunder, which require broker-dealers such as Weis to file with regulatory authorities accurate and truthful reports of their financial condition, including reports such as those certified by Touche Ross, in order to ensure the integrity and safety of the nation's securities markets and of the brokers and dealers that participate therein.

34. Weis, its Board of Directors, its creditors, customers, lenders and shareholders were among the class of persons which Section 17 of the 1934 Act was designed to protect and were among the beneficiaries of duties imposed on Touche Ross by Section 17 of the 1934 Act. The injuries which have occurred to Weis, its creditors, customers, lenders and shareholders as a result of the liquidation of Weis were of the type that Section 17 of the 1934 Act was intended to prevent.

35. As a result of Touche Ross' violation of Section 17 of the 1934 Act and the rules and regulations promulgated thereunder, its aiding and abetting of the Weis Five's violation of Section 17 of the 1934 Act and the rules and regulations promulgated thereunder, and its breach of the duties imposed by Section 17 of the 1934 Act and the rules and regulations promulgated

thereunder, Weis, its creditors, customers, lenders and shareholders have suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
SECOND CAUSE OF ACTION

36. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 34 herein as though here set forth in full.

37. As a result of Touche Ross' negligence per se in violating Section 17 of the 1934 Act (15 U.S.C. Section 78q), and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
THIRD CAUSE OF ACTION

38. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

39. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 28 through 31 herein, and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
FOURTH CAUSE OF ACTION

40. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

41. The auditing and accounting services performed by Touche Ross with respect to Weis were performed in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 opinion letters and the accompanying financial

to the Financial Questionnaire and financial statements were false, inaccurate and incomplete.

42. By reason of the foregoing reckless and grossly negligent conduct of Touche Ross, and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
FIFTH CAUSE OF ACTION

43. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

44. In connection with the auditing and accounting services performed by Touche Ross and as compensation therefor, Weis paid Touche Ross a certain sum of money (the "Touche Ross Fee"), the amount of which is not presently known to Plaintff Trustee.

45. By reason of Touche Ross' breach of and failure to perform its agreement to render said auditing and accounting services in a thorough, proper, skillful and diligent manner, Weis is entitled to general damages in the amount of the Touche Ross Fee and to consequential damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
SIXTH CAUSE OF ACTION

46. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

47. In its engagement letter with Weis and other communications to Weis, Touche Ross expressly and impliedly warranted to Weis that its services to Weis would be of a certain quality (i.e. that, *inter alia*, they would comply with

generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC).

48. By reason of the breaches and failures of Touche Ross, including those set forth in paragraphs 28 through 30 herein, those services were not of the warranted quality and were wholly without value to Weis.

49. By reason of Touche Ross' breach of warranty of the quality of its services to Weis, Weis is entitled to general damages in the amount of the difference between the actual and warranted values of the services rendered, and to consequential damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF SIPC'S
FIRST CAUSE OF ACTION

50. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

51. Touche Ross' audit of Weis failed to comply with the auditing standards and regulations prescribed by the 1934 Act and the rules and regulations promulgated thereunder, in that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements prepared by Touche Ross were false, inaccurate and incomplete.

52. As a consequence of the liquidation of Weis, the SIPC fund has been or may be depleted in order to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

53. As a result of Touche Ross' failure to comply with the auditing standards prescribed by the 1934 Act and the rules and regulations promulgated thereunder, and as a result of Touche Ross' breach of the duties it owed to SIPC thereunder, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
SECOND CAUSE OF ACTION

54. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

55. As a result of Touche Ross' failure to comply with the auditing standards prescribed by the 1934 Act and the rules and regulations promulgated thereunder, in that the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements prepared by Touche Ross were false, inaccurate and incomplete, Touche Ross breached the duties it owed to the customers and certain other creditors of Weis by misleading them into believing or assuming that Weis was not in financial difficulty, and consequently over 34,000 of said customers and creditors ultimately filed claims in the Weis liquidation proceeding.

56. The SIPC fund has been or may be depleted in order to satisfy the claims of the over 34,000 customers and certain other creditors of Weis, hereinabove mentioned in paragraph 55, and to pay for certain administrative expenses of the liquidation.

57. But for Touche Ross' breach of the duties it owed to the customers and certain other creditors of Weis by its failure to comply with the auditing standards and regulations prescribed by the 1934 Act and the rules and regulations promulgated thereunder, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is

subrogated to those claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services performed by Touche Ross with respect to Weis.

58. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
THIRD CAUSE OF ACTION

59. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

60. Touche Ross had knowledge of or, but for its errors and omissions, should have had knowledge of the deception caused by the Weis Five, in violation of the 1934 Act and the rules and regulations promulgated thereunder, by means of the filing or dissemination of the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements.

61. Touche Ross breached the duties it owed to SIPC by failing to inquire as to, and to disclose, the deception caused by the Weis Five, in violation of the 1934 Act and the rules and regulations promulgated thereunder, by means of the filing or dissemination of the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements.

62. The SIPC fund has been or may be depleted in order to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

63. As a result of Touche Ross' aiding and abetting of the Weis Five's violation of the 1934 Act and the rules and regulations promulgated thereunder as discussed in paragraphs 60 and 61 hereinabove, and as a result of the consequent depletion of the SIPC fund as indicated in paragraph 62 hereinabove, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
FOURTH CAUSE OF ACTION

64. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

65. Touche Ross had knowledge of or, but for its errors and omissions, should have had knowledge of the deception caused by the Weis Five, in violation of the 1934 Act and the rules and regulations promulgated thereunder, by means of the filing or dissemination of the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements.

66. Touche Ross breached the duties it owed to the customers and certain other creditors of Weis by failing to inquire as to, and to disclose, the deception caused by the Weis Five, in violation of the 1934 Act and the rules and regulations promulgated thereunder, by means of the filing or dissemination of the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements.

67. The SIPC fund has been or may be depleted in order to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

68. But for Touche Ross' aiding and abetting of the Weis Five's violation of the 1934 Act and the rules and

regulations promulgated thereunder, as discussed in paragraphs 65 and 66 hereinabove, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is subrogated to those claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services performed by Touche Ross with respect to Weis.

69. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
FIFTH CAUSE OF ACTION

70. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

71. As a consequence of the liquidation of Weis, SIPC was required to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

72. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 28 through 30 herein, and not as a result of any negligence of SIPC, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
SIXTH CAUSE OF ACTION

73. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

74. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 28 through 30 herein (and not as a result of any negligence of any customer or creditor of Weis), the customers and certain other creditors of Weis were misled into believing or assuming that Weis was not in financial difficulty, and consequently over 34,000 of said customers and creditors ultimately filed claims in the Weis liquidation proceeding.

75. The SIPC fund has been or may be depleted in order to satisfy the claims of the over 34,000 customers and certain other creditors of Weis, hereinabove mentioned in paragraph 74, and to pay for certain administrative expenses of the liquidation.

76. But for Touche Ross' negligence and malpractice, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is subrogated to those claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services performed by Touche Ross with respect to Weis.

77. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
SEVENTH CAUSE OF ACTION

78. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

79. As a consequence of the liquidation of Weis, the SIPC fund has been or may be depleted in order to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

80. As a result of the malpractice of Touche Ross and its breach of the duties it owed to SIPC (and not as a result of any negligence of SIPC), in that the auditing and accounting services performed by Touche Ross were conducted in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements were false, inaccurate and incomplete, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
EIGHTH CAUSE OF ACTION

81. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 31 herein as though here set forth in full.

82. As a result of the malpractice of Touche Ross and its breach of the duties it owed to the customers and certain other creditors of Weis (and not as a result of any negligence of any customer or creditor of Weis), in that the auditing and accounting services performed by Touche Ross were conducted in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements were false, inaccurate and incomplete, the customers and certain other creditors of Weis were misled into believing or assuming that Weis was not in financial difficulty, and consequently over 34,000 of said customers and certain other creditors ultimately filed claims in the Weis liquidation proceeding.

83. The SIPC fund has been or may be depleted in order to satisfy the claims of the over 34,000 customers and certain other creditors of Weis, here unknown and unknowable in particular, and to pay the attorneys' fees and other expenses of the liquidation

84. But for Touche Ross' malpractice, recklessness and gross negligence, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is subrogated to those claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services performed by Touche Ross with respect to Weis.

85. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

WHEREFORE, plaintiffs demand judgment:

a. for $51,000,000 on Plaintiff Trustee's First Cause of Action;

b. for $51,000,000 on Plaintiff Trustee's Second Cause of Action;

c. for $51,000,000 on Plaintiff Trustee's Third Cause of Action;

d. for $51,000,000 on Plaintiff Trustee's Fourth Cause of Action;

e. for the amount of the Touche Ross Fee plus $51,000,000 on Plaintiff Trustee's Fifth Cause of Action;

f. for an amount which is the difference between the actual and warranted values of Touche Ross' services with respect to Weis, plus $51,000,000, on Plaintiff Trustee's Sixth Cause of Action;

g. for $14,000,000 on Plaintiff SIPC's First Cause of Action;

h. for $14,000,000 on Plaintiff SIPC's Second Cause of Action;

i. for $14,000,000 on Plaintiff SIPC's Third Cause of Action;

j. for $14,000,000 on Plaintiff SIPC's Fourth Cause of Action;

k. for $14,000,000 on Plaintiff SIPC's Fifth Cause of Action;

l. for $14,000,000 on Plaintiff SIPC's Sixth Cause of Action;

m. for $14,000,000 on Plaintiff SIPC's Seventh Cause of Action;

n. for $14,000,000 on Plaintiff SIPC's Eighth Cause of Action;

o. for interest on the amounts demanded herein;

p. for the costs and disbursements of this action; and

q. for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York
April 30, 1976

HUGHES HUBBARD & REED

By _____
A Member of the Firm
Attorneys for Edward S. Redington,
as Trustee for the liquidation of
the business of Weis Securities, Inc.
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HAWKINS, DELAFIELD & WOOD

By _____
A Member of the Firm
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EXHIBIT A TO COMPLAINT.

WEIS, VOISIN & CO., INC.

REPORT ON EXAMINATION OF STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

REPORT ON EXAMINATION OF STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 7, 1972

Board of Directors
Weis, Voisin & Co., Inc.
New York, New York

We have examined the accompanying statement of financial condition of Weis, Voisin & Co., Inc. as of May 26, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the statement of financial condition referred to above presents fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

Touche Ross & Co
Certified Public Accountants

WEIS, VOISIN & CO., INC.

STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

ASSETS

Cash	$ 1,750,766
Deposits with clearing organizations and others	753,033
Receivables from brokers and dealers	8,775,852
Receivables from customers	76,376,206
Secured demand notes of subordinated lenders (collateralized by securities, at quoted market $6,625,570)	4,226,794
Miscellaneous receivables	3,610,935
Securities in firm trading and investment accounts:	
Marketable securities, at quoted market	2,542,457
Securities not readily marketable, at fair value	949,908
Securities held under subordination agreements, at quoted market	5,460,751
Investment in and advances to subsidiaries, at cost, plus equity in undistributed earnings	1,153,583
Exchange memberships:	
Owned, at cost (last sales prices $1,044,606)	1,289,938
Held under subordination agreement, at last sales prices	421,494
Leasehold improvements, office furniture and fixtures, at cost, less accumulated amortization and depreciation of $789,960	3,048,296
Excess of investment over net assets acquired, less accumulated amortization of $76,465 (Note 1)	2,217,403
Miscellaneous other assets	1,983,371
	$115,568,787

LIABILITIES AND STOCKHOLDERS' EQUITY

Short-term bank loans, collateralized by customers' margin accounts securities		$ 47,575,000
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements		6,912,245
Payables to brokers and dealers		14,311,794
Payables to customers, including $6,791,886 of fee credit balances		16,770,379
Securities sold but not yet purchased, at quoted market		2,967,457
Accounts payable and accrued expenses		2,731,488
Due to lessors on lease contracts capitalized		1,475,215
Subordinated liabilities and stockholders' equity:		
Liabilities subordinated to all claims of general creditors (Note 2)	$15,237,951	
Stockholders' equity:		
Capital stock (Note 2)	2,374,800	
Additional paid-in capital	2,767,078	
Retained earnings	3,811,397	
	8,953,275	
Less treasury stock, at cost	1,366,017	
	7,587,258	22,825,209
Contingencies and commitments (Note 3)		
		$115,568,787

See notes to statement of financial condition

WEIS, VOISIN & CO., INC.

NOTES TO STATEMENT OF FINANCIAL CONDITION

MAY 26, 1972

NOTE 1:

As of October 1, 1971, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hockstein & Trotta, Inc., a member firm of the New York Stock Exchange. This acquisition has been accounted for as a purchase and the excess of investment over net assets acquired is being amortized over a twenty-year period.

NOTE 2:

The capital stock of the Company is composed of the following classes of stock:

	Number of shares				
Description	Authorized	Issued	Outstanding	In treasury	Amount
Common, par value $1, Class A (voting)	150,000	150,000	110,948	39,052	$ 150,000
Common, par value $1, Class B (non-voting)	150,000	150,000	149,080	920	150,000
Preferred, par value $100, Class A	55,000	16,248	10,273	5,975	1,624,800
Preferred, par value $100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	-	350,000
Preferred, par value $100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	-	100,000
Preferred, par value $100, Class D, 6% cumulative	10,000	-	-	-	-
					$2,374,800

The Company has granted stock options to subordinated lenders to purchase Class B, non-voting common stock as follows:

Option granted	Exercise amount	Expiration date
Shares equal to 2% of total Class A and Class B common stock issued and outstanding at the exercise date	2% of total stockholders' equity at exercise date	1976
10,907 shares	$25 per share	1975
2,000 shares	$35,000	Upon termination of subordination agreement

The exercise of these options is subject to the written approval of the New York Stock Exchange.

NOTE 3:

Aggregate rental commitments at May 26, 1972, under material noncancelable leases for premises were approximately $34,650,000 payable as follows:

Fiscal year ending	Amount
May 25, 1973	$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978-1991	20,475,000

EXHIBIT B TO COMPLAINT.

WEIS. VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

AND ADDITIONAL INFORMATION

MAY 26, 1972

TOUCHE ROSS & CO.

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

AND ADDITIONAL INFORMATION

MAY 26, 1972

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

AND ADDITIONAL INFORMATION

MAY 26, 1972

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NOTE: In accordance with general instructions regarding the preparation of this questionnaire, questions and subdivisions have been omitted where the respondent had nothing to report.

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 7, 1972

Board of Directors
Weis, Voisin & Co., Inc.
New York, New York

We have examined the answers to the financial questionnaire of Weis, Voisin & Co., Inc. as of May 26, 1972. Our examination was made in accordance with generally accepted auditing standards, and accordingly included a review of the accounting system, internal accounting control and the procedures for safeguarding securities including such tests thereof for the period since the prior examination date and such other auditing procedures as we considered necessary in the circumstances, including the audit procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission.

In our opinion, the accompanying answers to the financial questionnaire present fairly the financial position of Weis, Voisin & Co., Inc. at May 26, 1972, in the form prescribed by the New York Stock Exchange and the Securities and Exchange Commission, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period.

Touche Ross & Co.
Certified Public Accountants

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
1. Bank balances and other deposits:						
Cash on hand	$ 11,935					
Cash on deposit:						
Subject to immediate withdrawal	1,482,856					
Segregated under the Commodity Exchange Act	263,975					
Guaranty deposits with clearing organizations:				$ 445,960		
General funds	599,143					
Segregated under the Commodity Exchange Act	25,010					
Good faith deposits - brokers and dealers - Current	128,880					
2. Money borrowed, and accounts carried for respondent by other banking or brokerage houses, secured by or containing customers' collateral:						
A. Money borrowed:						
1. From banks, trust companies and other financial institutions		47,575,000		71,372,501		
B. Accounts carried by other banking or brokerage houses:						
1. Securities accounts:						
a. Accounts with net debit balance, National Clearing Corp.	453,361		$ 1,257,102	889,204		
b. Accounts with net credit balance, Pacific Coast Stock Exchange Clearing Corp.		197,272	193,123	314,089		
2. Commodities accounts - futures:						
a. Regulated commodities accounts:					$ 15,374	$ 49,214
ii. Accounts liquidating to a deficit	176,914					
b. Non-regulated commodities accounts:					16,140	30,839
ii. Accounts liquidating to a deficit	44,022					
3. Money borrowed, and accounts carried for respondent by other banking or brokerage houses, unsecured, or secured entirely by collateral owned by respondent and/or its officers and directors, or by securities covered by satisfactory subordination agreements*:						
A. Money borrowed:						
1. From banks, trust companies and other financial institutions		6,912,245		12,806,501		

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
4. Other accounts and open items with brokers and dealers:						
A. Securities borrowed	$ 2,641,600		$ 2,590,700			
B. Securities failed to deliver:						
1. Outstanding less than 30 days	5,051,188		4,995,527			
2. Outstanding 30 days or more:						
30 through 39 calendar days	97,510		91,758			
40 through 49 calendar days	25,311		19,721			
50 through 59 calendar days	5,932		4,600			
60 calendar days or more	66,921		79,830			
C. Securities loaned:						
1. For customers		$ 8,158,872		$ 8,083,063		
2. For accounts reportable under 10, 11 and 12		344,928		350,387		
D. Securities failed to receive:						
1. For customers:						
a. Outstanding less than 30 days		4,870,326		4,963,022		
b. Outstanding 30 days or more		222,859		251,152		
3. For accounts reportable under 10, 11 and 12:						
a. Outstanding less than 30 days		405,333		422,999		
b. Outstanding 30 days or more		6,071		5,516		
E. Open transactions in foreign securities with other brokers	212,085	57,594	708,348	1,502,139		
5. Valuation of securities in box, transfer and transit:						
A. Negotiable securities in box and in transfer				37,949,184		

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WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART 1

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
6. Customers' securities accounts:						
A. Cash accounts:						
1. Accounts with debit balances	$ 4,201,268		$ 5,734,085	$ 346,799		
2. Accounts with credit balances		$ 5,263,785	1,616,717	5,656,274		
B. Secured accounts:						
1. Accounts with debit balances	71,823,113		96,673,766	1,719,750		
2. Accounts with credit balances		3,207,453	562,761	3,240,069		
C. Partly secured accounts (see Reserve - Question 13):						
2. Accounts with credit balances		196		2,660		
D. Unsecured accounts (see Reserve - Question 13)	419,241			35,274		
E. Accounts with credit balances having open contractual commitments		760,916	101,005			
F. Accounts with free credit balances		6,791,886				
G. Fully paid securities not segregated:						
1. Segregation instructions issued:						
a. Securities failed to receive			1,021,791			
b. Securities due from customers			4,293,950			
c. Pending execution of instructions (based on tests, substantially all cleared within three business days)			8,704,928			
2. Substantially all in process of sale (based on tests)			7,730,105			
7. Customers' commodities accounts:						
A. Accounts with open future contracts liquidating to an equity:					$ 36,216	$ 23,281
1. Regulated commodities		269,566			34,608	36,058
2. Non-regulated commodities		275,749				
D. Unsecured debit balances	6,170					
E. Accounts with free credit balances:						
1. Regulated		143,613				
2. Non-regulated		46,871				

WEIS, VOLSH & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
8. Accounts of officers and directors:						
A. Officers:						
1. Securities accounts:						
A. Bona fide cash accounts:						
1. Accounts with debit balances	$ 13,689		$ 14,600			
B. Secured accounts:						
1. Accounts with debit balances	101,240		117,326			
F. Accounts with free credit balances		$ 10,344				
G. Fully paid securities not segregated			11,400			
10. Trading and investment accounts of respondents:						
A. Securities accounts:						
1. Exempt securities	3,255,793	1,707,061	506,000			
2. Other securities			2,749,793	$ 1,707,061		
C. Arbitrage account	1,236,572	1,260,396	1,236,572	1,260,396		

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
11. Capital accounts:						
C. Corporation capital:						
1. Capital stock:						
A. Authorized:						
Class A, $1 par - 150,000 shares						
Class B, $1 par - 150,000 shares						
Preferred A, $100 par - 55,000 shares						
Preferred B, $100 par, 1% cumulative, convertible - 3,500 shares						
Preferred C, $100 par, 1% cumulative, convertible - 2,500 shares						
Preferred D, $100 par, 6% cumulative - 10,000 shares						
B. Issued:						
Class A, $1 par - 150,000 shares		$ 150,000				
Class B, $1 par - 150,000 shares		150,000				
Preferred A, $100 par - 16,248 shares		1,624,800				
Preferred B, $100 par, 1% cumulative, convertible - 3,500 shares		350,000				
Preferred C, $100 par, 1% cumulative, convertible - 1,000 shares		100,000				
C. Treasury stock:						
Class A, $1 par - 39,052 shares	$ 750,071					
Class B, $1 par - 920 shares	18,400					
Preferred A, $100 par - 5,975.46 shares	597,546					
2. Paid-in capital		2,767,070				
3. Retained earnings		3,011,397				

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
12. Subordinated accounts and borrowings:						
A. Subordinated accounts:						
Officer and directors:						
1. Accounts with debit balances	$ 39,939		$ 82,148			
2. Accounts with credit balances		$ 478,856	698,662			
3. Securities not readily marketable			96,157			
Debenture holders:						
1. Accounts with debit balances	14,998		116,062			
2. Accounts with credit balances		4	8,670			
Customers:						
1. Accounts with debit balances	690,260		1,431,460			
2. Accounts with credit balances		2,256,768	3,005,725			
3. Securities not readily marketable			21,867			
B. Other subordinated borrowings:						
Subordinated exchange memberships at market		421,494				
Subordinated debentures		3,110,275				
Secured demand notes - see Question 13		4,255,000				

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
13. Other accounts:						
Exchange memberships:						
Owned by respondent - at cost	$ 1,209,930					
Owned by stockholders (subordinated) - at last sales prices	421,494					
Leasehold improvements, office furniture and fixtures - at cost, less accumulated amortization and depreciation of $188,916	1,341,057					
Commodity difference accounts:						
Regulated		$ 19,473			$ 19,473	
Non-regulated		17,501			17,501	
Loans and advances	99,458					
Commissions receivable - last five trade dates	432,107					
Insurance claim receivable re Winslow, Cohu & Stetson, Inc.	1,285,401					
Investment in and advances to subsidiaries - at equity	1,153,583					
Receivable from stockholders	768,199					
Miscellaneous receivables:						
Current	503,058					
Other	108,471					
Prepaid expenses and deposits	551,138					
Deferred charges	395,901					
Dividends and interest receivable, payable and unclaimed:						
Current (outstanding less than 30 days)	48,991	120,373	$ 635,277	$ 591,771		
Not current	135,067	97,729	233,431	92,607		
Scheinman, Hochstin & Trotta, Inc. liquidating omnibus account	745,238					
Secured demand notes receivable from subordinated lenders, collateralized by:	4,255,000					
Cash		28,206				
Exempt securities			1,871,420			
Non-exempt securities			4,754,150			
Due from member firm	91,123					
Excess of investment over net assets acquired, less accumulated amortization of $76,465	2,217,403					
Accrued customers' interest receivable - current	139,060					

WEIS, VOISIN & CO., INC.

ANSWERS TO FINRA EXA QUESTIONNAIRE

MAY 26, 1972

PART I

Question number and title of account	Ledger balance Debit	Ledger balance Credit	Security valuation Long	Security valuation Short	Commodity contracts Losses	Commodity contracts Gains
13. Other accounts (continued):						
Purchased public relations contracts re acquisition of Thomas J. Deegan & Co., Inc., less accumulated amortization of $29,432	$ 291,094					
Leasehold improvements, office furniture and fixtures - at cost acquired under lease contracts, less accumulated amortization and depreciation of $601,044	1,707,239					
Due to lessors on lease contracts capitalized		$ 1,475,215				
Other liabilities		946,245				
Reserve for doubtful accounts		200,000				
Accrued interest payable		275,562				
Accrued salaries and commissions		652,583				
Floor brokerage payable		74,778				
Federal, state, and local taxes payable on income		564,218				
Unlocated security differences			$ 43,821	$ 5,980		
	$112,435,971	$112,435,971	$154,014,358	$154,014,358	$139,392	$139,392

NOTE TO QUESTION 13:

Security count differences, discovered through physical count and verification procedures pursuant to Rule 17a-5 and 17a-13, classified by date of discovery, which remained unresolved or were bought or sold since the last examination date are as follows:

	Date of discovery	Number of securities	Security valuation Long	Security valuation Short
Unresolved differences	May 26, 1972	60	$43,821	$5,980
Securities bought or sold:			Bought	Sold
	March 24, 1972	3		$7,800
	November 26, 1971	1		160

There were 14,624 securities with positions at May 26, 1972.

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

16. Unrecorded assets, liabilities, and accountabilities:

Under 31 leases for premises in effect as of May 26, 1972, aggregate annual rentals are as follows:

Fiscal year ending	
May 25, 1973	$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978 - 1991	20,475,000

WEIS, VOISIN & CO., INC.

ANSWERS TO FINANCIAL QUESTIONNAIRE

MAY 26, 1972

PART I

NOTE

The Company has granted stock options to subordinated lenders to purchase Class B, non-voting common stock as follows:

Option granted	Exercise amount	Expiration date
Shares equal to 2% of total Class A and Class B common stock issued and outstanding at the exercise date	2% of total stockholders' equity at exercise date	1976
10,907 shares	$25 per share	1975
2,000 shares	$35,000	Upon termination of subordination agreement

The exercise of these options is subject to the written approval of the New York Stock Exchange.

ADDITIONAL INFORMATION

The additional information presented in the following pages which has been taken primarily from accounting and other records of the Respondent has been subjected to the tests and other auditing procedures applied in our examination of the answers to financial questionnaire of Weis, Voisin & Co., Inc. as of May 26, 1972. In our opinion, such information is fairly presented in all material respects in relation to the answers to the financial questionnaire taken as a whole although it is not necessary for a fair presentation of financial position.

Touche Ross & Co.
Certified Public Accountants

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

SUMMARY

Aggregate indebtedness		$80,315,478
1/15 of aggregate indebtedness		$ 5,354,365
Net capital:		
Total credit items	$30,099,473	
Total debit items	21,867,090	
NET CAPITAL		8,232,383
Capital in excess of minimum requirements		$ 2,878,018
Ratio of indebtedness to capital		976%

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

Question number	Aggregate indebtedness	
2A1	Money borrowed, collateralized by customers' securities	$47,575,000
2B1	Credit balance in account carried by other banking or brokerage house	197,272
	Open items with brokers and dealers:	
4C1	Securities loaned - customers' securities	8,158,872
4D1	Securities failed to receive customers' securities	5,093,185
4E	Foreign securities transactions	57,594
	Customers' security accounts:	
6A2	Cash	5,263,785
6B2	Secured	3,207,453
6E	Accounts with credit balances having open contractual commitments	760,916
6F	Free credits	6,791,886
	Customers' commodity accounts:	
7A2	Equities in nonregulated commodities	277,199
7E1	Free credits - regulated	143,613
7E2	Free credits - nonregulated	46,871
8F	Securities and commodities accounts of officers and directors	10,344
13	Accrued interest payable	275,562
13	Accrued salaries and commissions	652,583
13	Floor brokerage payable	74,778
13	Dividends and interest payable	218,102
13	Federal, state and local taxes payable on income	564,218
13	Other liabilities	946,245
	Total aggregate indebtedness	$80,315,478

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

Question number	Credit items	
6C	Ledger balances in partly secured accounts	$ 196
10	Firm trading and investment accounts:	
	Securities long	3,255,793
	Credit balance	1,707,061
11	Capital stock - A	150,000
11	Capital stock - B	150,000
11	Capital stock - Preferred - A	1,624,800
11	Capital stock - Preferred - B	350,000
11	Capital stock - Preferred - C	100,000
11	Paid-in capital	2,767,078
11	Retained earnings	3,811,397
12A	Subordinated lenders' ledger balances - officers and directors	478,856
12A	Subordinated lenders' ledger balances - debenture holders	4
12A	Subordinated lenders' ledger balances - customers	2,256,768
12A	Securities in subordinated lenders' accounts	5,460,751
12B	Other subordinated borrowings - memberships	421,494
12B	Other subordinated borrowings - debentures	3,110,275
12B	Other subordinated borrowings - secured demand notes	4,255,000
13	Reserve for doubtful accounts	200,000
	Total credit items	$30,099,473

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

Question number	Debit items	
6C	Short securities in partly secured accounts	$ 2,660
6D	Debit balances in unsecured accounts	419,241
6D	Short securities in unsecured accounts	35,274
7D	Debit balances in unsecured commodities accounts	6,170
10	Firm trading and investment accounts:	
	Securities short	1,707,061
	Debit balance	3,255,793
11	Treasury stock, class A	750,071
11	Treasury stock, class B	18,400
11	Treasury stock, preferred A	597,546
12A	Subordinated lenders' ledger balances - officers and directors	39,939
12A	Subordinated lenders' ledger balances - debenture holders	14,998
12A	Subordinated lenders' ledger balances - customers	690,260
13	Exchange memberships - firm	1,289,938
13	Exchange memberships - subordinated lenders	421,494
13	Leasehold improvements, furniture and fixtures, etc.	1,341,057
13	Miscellaneous receivables	108,471
13	Loans and advances	99,458
13	Insurance claims receivable re Winslow, Cohu & Stetson, Inc.	1,285,401
13	Investments in and advances to subsidiaries at equity	1,153,583
13	Prepaid expenses and deposits	551,138
13	Deferred charges	395,901
13	Dividends and interest receivable - noncurrent	135,067
13	Short securities receivable - dividends	92,607
13	Excess of investment over net assets acquired	2,217,403
13	Receivable from stockholders	768,199
13	Due from member firm	91,123

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

Question number	Debit items		
13	Purchased public relations contracts re acquisition of Thomas J. Deegan & Co., Inc.		$ 291,094
13	Leasehold improvements, office furniture and fixtures, acquired under lease contracts	$1,707,239	
	Less amount due to lessors	1,475,215	232,024
13	Scheinman, Hochstin & Trotta, Inc. liquidating omnibus account		745,238
13	Unlocated security differences - short		5,980
	Charges to capital:		
	"Haircuts" (Schedule 1):		
	Subordinated lenders - customers		1,170,062
	Subordinated lenders - debenture holders		36,580
	Subordinated lenders - officers and directors		295,194
	Firm accounts		1,529,962
	1-1/2% of value of commodities		48,910
	Penalties on fails to deliver		23,793
	TOTAL DEBIT ITEMS		$21,867,090

WEIS, VOISIN & CO., INC.

NET CAPITAL COMPUTATION

MAY 26, 1972

SUMMARY OF CAPITAL CHARGES

	Long security value	Capital charge %	Capital charge Amount
Subordinated accounts:			
Customers	$ 990	-	$ -
	19,500	1	195
	29,300	2	586
	206,400	5	10,320
	532,000	10	53,200
	66,500	15	9,975
	8,300	20	1,660
	21,867	100	21,867
	3,574,195	30	1,072,259
	$4,459,052		$1,170,062
Debenture holders	$ 5,600	15	$ 840
	119,132	30	35,740
	$ 124,732		36,580
Officers and directors	$ 2,475	-	-
	5,200	2	104
	27,780	3	833
	82,850	5	4 143
	10,500	10	1 050
	10,100	15	1.515
	11,800	20	2,360
	96,157	100	96,157
	630,105	30	189.032
	$ 876,967		295,194
Firm accounts	$1,261,635	-	-
	66,482	2	1,330
	238,655	3	7,160
	53,461	5	2,673
	3,3[illegible]	10	335
	122,950	15	18,443
	56,678	50	28.339
	949,908	100	949.908
	1,739,246	30	52,[illegible]
	$4,492,365		1,529,962
Commodities:			
Fails to deliver:			
40 through 49 days	$ 25,311	10	2,531
50 through 59 days	5,932	20	1,186
60 days or more	66,921	30	20,076
	$ 98,[illegible]		23,793
			$3,055.591

WEIS, VOISIN & CO., INC.

REPORT ON INTERNAL CONTROL

MAY 26, 1972

We have examined the financial statements of Weis, Voisin & Co., Inc. for the period ended May 26, 1972 and have issued our report thereon dated July 7, 1972. As a part of our examination, we reviewed and tested the Company's system of internal accounting control to the extent we considered necessary to evaluate the system as required by generally accepted auditing standards. Under these standards the purpose of such evaluation is to establish a basis for reliance thereon in determining the nature, timing, and extent of other auditing procedures that are necessary for expressing an opinion on the financial statements.

The objective of internal accounting control is to provide reasonable, but not absolute, assurance as to the safeguarding of assets against loss from unauthorized use or disposition, and the reliability of financial records for preparing financial statements and maintaining accountability for assets. The concept of reasonable assurance recognizes that the cost of a system of internal accounting control should not exceed the benefits derived and also recognizes that the evaluation of these factors necessarily requires estimates and judgments by management.

There are inherent limitations that should be recognized in considering the potential effectiveness of any system of internal accounting control. In the performance of most control procedures, errors can result from misunderstanding of instructions, mistakes of judgment, carelessness or other personal factors. Control procedures whose effectiveness depends upon segregation of duties can be circumvented by collusion. Similarly, control procedures can be circumvented intentionally by management with respect either to the execution and recording of transactions or with respect to the estimates and judgments required in the preparation of financial statements. Further, projection of any evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, and that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the Company's system of internal accounting control for the period November 26, 1971, the prior examination date, to May 26, 1972 was made for the purpose set forth in the first paragraph above, and it would not necessarily disclose all weaknesses in the system. However, such study and evaluation disclosed no conditions that we believe to be material weaknesses.

Touche Ross & Co.

Certified Public Accountants

EXHIBIT C TO COMPLAINT.

WEIS. VOISIN & CO.. INC.

AND SUBSIDIARIES

REPORT ON EXAMINATION OF CONSOLIDATED FINANCIAL STATEMENTS

YEAR (52 WEEKS) ENDED MAY 26, 1972

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC

AND SUBSIDIARIES

REPORT ON EXAMINATION OF CONSOLIDATED FINANCIAL STATEMENTS

YEAR (52 WEEKS) ENDED MAY 26, 1972

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 21, 1972

Board of Directors
Weis, Voisin & Co., Inc.
New York, New York

We have examined the accompanying consolidated balance sheet of Weis, Voisin & Co., Inc. and subsidiaries as of May 26, 1972, and the related statements of earnings, stockholders' equity and changes in financial position for the year (52 weeks) then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the consolidated financial statements referred to above present fairly the financial position of Weis, Voisin & Co., Inc. and subsidiaries at May 26, 1972, the results of their operations and changes in their financial position for the year (52 weeks) then ended, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

Touche Ross & Co

Certified Public Accountants

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

MAY 26, 1972

ASSETS

Cash	$ 1,842,307
Deposits with clearing organizations and others	753,033
Receivables from brokers and dealers (Note 4)	8,775,852
Receivables from customers (Note 4)	76,376,206
Secured demand notes of subordinated lenders (collateralized by cash of $28,206 and securities, at quoted market $6,625,570) (Note 5)	4,226,794
Miscellaneous receivables (Note 9)	1,763,785
Securities owned (Note 6)	4,492,365
Securities held under subordination agreements, at quoted market (Note 5)	5,460,751
Exchange memberships:	
Owned, at cost (last sales prices $1,044,606)	1,289,938
Held under subordination agreements, at last sales prices (Note 5)	421,494
Leasehold improvements, office furniture and fixtures, at cost, less accumulated amortization and depreciation of $1,008,058 (Note 7)	3,513,321
Excess of investment over net assets acquired, less accumulated amortization of $76,465 (Note 3)	2,217,403
Miscellaneous other assets (Note 3)	2,396,602
	$115,529,851

LIABILITIES AND STOCKHOLDERS' EQUITY

Short-term bank loans, collateralized by customers' margin accounts securities		$ 47,575,000
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements		6,912,245
Payables to brokers and dealers (Note 4)		14,311,794
Payables to customers (Note 4)		16,770,379
Securities sold but not yet purchased (Note 6)		2,967,457
Accounts payable and accrued expenses (Note 8)		2,952,582
Due to lessors on lease contracts capitalized (Note 7)		1,475,215
Subordinated liabilities and stockholders' equity:		
Liabilities subordinated to all claims of general creditors (Note 5)	$14,977,921	
Stockholders' equity (Notes 9 and 10):		
Capital stock	2,374,800	
Additional paid-in capital	2,767,078	
Retained earnings	3,811,397	
	8,953,275	
Less treasury stock, at cost	1,366,017	
	7,587,258	22,565,179
Contingencies and commitments (Notes 11 and 12)		
		$115,529,851

See notes to consolidated financial statements

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF EARNINGS

YEAR (52 WEEKS) ENDED MAY 26, 1972

Revenues:		
Commissions:		
Customers		$19,160,975
Clearing brokers		762,745
Investment banking		5,191,186
Principal transactions (Note 6)		2,288,365
Interest		3,408,607
Fees		873,707
Other		161,719
		31,847,303
Expenses:		
Employee compensation	$15,575,609	
Commissions - clearing brokers	456,247	
Floor brokerage commissions	892,825	
Interest	3,120,501	
Office and equipment rentals	3,024,609	
Communications	2,596,221	
Other operating expenses	4,394,017	30,060,029
EARNINGS BEFORE TAXES ON INCOME		1,787,274
Taxes on income (Note 8)		765,000
NET EARNINGS		$ 1,022,274
Weighted average number of common and common equivalent shares outstanding (Note 13)		234,204
Earnings per common and common equivalent share (Note 13)		$4.36

See notes to consolidated financial statements

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

YEAR (52 WEEKS) ENDED MAY 26, 1972

	Capital stock issued							
	Number of shares							
	Common		Preferred					
	Class A par $1.00	Class B par $1.00	Class A, par $100.00	Class B par $100.00	Class C par $100.00	Amount	Additional paid-in capital	Retained earnings
Balance, June 1, 1971	150,000	150,000	16,248	-	-	$1,924,800	$2,469,921	$2,789,123
Issued	-	-	-	3,500	1,000	450,000	-	-
Excess of proceeds over cost of treasury stock sold:								
Common, Class A - 29,375 shares	-	-	-	-	-	-	17,827	-
Common, Class B - 40,750 shares	-	-	-	-	-	-	279,330	-
Net earnings for the year (52 weeks) ended May 26, 1972	-	-	-	-	-	-	-	1,022,274
Balance, May 26, 1972	150,000	150,000	16,248	3,500	1,000	$2,374,800	$2,767,078	$3,811,397

	Capital stock in treasury			
	Number of shares			
	Common		Preferred	
	Class A, par $1.00	Class B par $1.00	Class A, par $100.00	Cost
Balance, June 1, 1971	61,375	24,124	6,412.96	$2,162,929
Purchased	7,052	17,546	4,962.50	835,057
Sold	(29,375)	(40,750)	(5,400.00)	(1,631,969)
Balance, May 26, 1972	39,052	920	5,975.46	$1,366,017

See notes to consolidated financial statements

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TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

YEAR (52 WEEKS) ENDED MAY 26, 1972

Source of funds:	
Operations:	
Net earnings	$ 1,022,274
Non-cash charges - depreciation and amortization	538,410
	1,560,684
Increase in:	
Short-term bank loans, collateralized by customers' margin account securities	31,073,040
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements	5,612,245
Payable to brokers and dealers	5,062,360
Payable to customers	5,642,327
Securities sold but not yet purchased	2,833,092
Liabilities subordinated to all claims of general creditors	6,474,117
Proceeds from issue of preferred stock	450,000
Proceeds from sale of treasury stock:	
Cost	1,631,969
Excess of proceeds over cost	297,157
Other sources	61,550
	60,698,541
Application of funds:	
Increase in:	
Deposits with clearing organizations	487,317
Receivables from brokers and dealers	4,064,603
Receivables from customers	42,7[illegible],012
Secured demand notes of subordinated lenders	4,225,794
Miscellaneous receivables	1,397,252
Securities owned	924,121
Securities held under subordination agreements	146,933
Exchange memberships owned	154,050
Exchange memberships held under subordination agreements	152,768
Miscellaneous other assets	1,750,911
Purchase of leasehold improvements and furniture and fixtures	1,937,996
Excess of investment over net assets acquired	2,217,403
Purchase of treasury stock	835,057
	61,095,017
Decrease in cash	$ 396,476

See notes to consolidated financial statements.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. PRINCIPLES OF CONSOLIDATION:

The consolidated financial statements include the accounts of Weis, Voisin & Co., Inc. and all of its subsidiaries. The results of operations of companies purchased are included from the dates of acquisition. All significant intercompany balances and transactions have been eliminated in consolidation.

2. ACCOUNTING:

In 1972 the Company adopted a fiscal year consisting of the fifty-two or fifty-three week period ending the last Friday of May. Prior to 1972, the Company's fiscal year ended on May 31.

Security transactions are recorded in the accounts on settlement date. Commission income and related expenses for transactions executed but not settled are accrued on financial statement dates.

3. ACQUISITIONS:

Scheinman, Hochstin & Trotta, Inc.:

As of October 1, 1971, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hochstin & Trotta, Inc. (SH&T), a former member firm of the New York Stock Exchange. This acquisition has been accounted for as a purchase and the excess of investment over net assets acquired of $2,293,868 is being amortized over a twenty-year period.

As part of the purchase agreement a subordinated lender of SH&T agreed to become a subordinated lender of the Company and to indemnify the Company to a maximum of $4,000,000 in the event the assumed liabilities exceeded the acquired assets. Through May 26, 1972 the liabilities assumed exceed the assets acquired by approximately $750,000 which is included in miscellaneous other assets.

Thomas J. Deegan Company, Inc.:

As of July 1, 1971, the Company acquired the outstanding capital stock of Thomas J. Deegan Company, Inc. in exchange for 3,500 shares of its 1% cumulative convertible preferred par value $100, Class B stock. The Company is accounting for this acquisition as a pooling.

4. RECEIVABLES FROM AND PAYABLES TO BROKERS AND DEALERS AND CUSTOMERS:

The components of receivables from and payables to brokers and dealers as of May 26, 1972 are as follows:

Securities failed to deliver	$ 5,246,870
Deposits paid for securities borrowed	2,641,600
Other	887,382
Total receivables from brokers and dealers	$ 8,775,852
Securities failed to receive	$ 5,642,689
Deposits received for securities loaned	8,433,450
Other	235,655
Total payables to brokers and dealers	$14,311,794

"Fails" represent the contract value of securities which have not been received or delivered by settlement date.

Receivables from and payables to customers represent the dollar balances arising in connection with normal cash and margin transactions. The receivables are collateralized by securities held by the Company which are not reflected in the accompanying consolidated financial statements. Free credit balances totaling approximately $6,792,000 at May 26, 1972 are included in payables to customers. Accounts of officers, directors and stockholders are included in receivables from and payables to customers since they are subject to the normal terms and regulations as to payment and, in the aggregate, are not significant.

5. LIABILITIES SUBORDINATED TO ALL CLAIMS OF GENERAL CREDITORS:

Certain creditors of the Company have signed agreements subordinating their debentures, exchange memberships or securities accounts to all claims of general creditors, and thus the respective amounts are available to the Company in computing net capital under the New York Stock Exchange rule regarding capital requirements (see Note 10). These agreements generally specify release, payment, or redemption no less than six months following the date on which the lender demands termination subject to approval of the New York Stock Exchange. These liabilities at May 26, 1972 are summarized as follows:

	Rate of interest	
Debentures	7 - 10%	$ 3,110,275
Secured demand notes	8%	4,255,000
Exchange memberships	6 - 8%	421,494
Equities in securities accounts:		
Securities at quoted market	2.8 - 5%	5,460,751
Cash	4 - 10%	1,730,401
		$14,977,921

6. SECURITIES OWNED:

Securities owned at May 26, 1972 consist of the Company's regular trading and investment accounts and are summarized as follows:

		Cost
Marketable securities - at quoted market:		
U. S. Government bonds	$ 330,200	$ 332,560
Municipal bonds	175,800	162,587
Corporate debentures and notes	69,718	69,608
Corporate stocks	1,730,167	1,74[illegible] 121
Arbitrage (convertible within 30 days)	1,236,572	1,1[illegible] 152
	3,542,457	3,46[illegible],636
Securities not readily marketable - at fair value	949,908	508,244
	$4,492,365	$3,969,879
Marketable securities sold but not yet purchased - at quoted market:		
Corporate debentures and notes	$ 24,734	$ 24,700
Corporate stocks	1,682,327	1,671,581
Arbitrage (convertible within 30 days)	1,260,396	1,192,206
	$2,967,457	$2,888,487

Quoted market has been determined by reference to available quotations as to marketable securities. The fair values of securities not readily marketable have been determined by management. Fair values as determined are, in the aggregate, not less than cost.

The increase in unrealized appreciation on securities owned for the fiscal year ended May 26, 1972 of $285,516 is included in principal transactions on the statement of earnings. The effect on net earnings (after taxes) is $170,667 or $.73 per share.

7. LEASEHOLD IMPROVEMENTS, OFFICE FURNITURE AND FIXTURES:

Leasehold improvements, office furniture and fixtures include approximately $2,300,000 of such assets acquired under lease contracts. The net book value of these assets of approximately $1,700,000 collateralizes the amounts due to lessors on lease contracts capitalized. The Company computes depreciation and amortization on the straight-line method for financial statement purposes (see Note 8).

8. TAXES ON INCOME:

Taxes on income indicate a significant variation in the customary relationship to earnings before taxes on income due to the effect of the different tax rates applied to ordinary income and capital gains, and because federal taxes on income were reduced by $113,000 of investment tax credit. The Company accounts for the investment tax credit by use of the flow-through method. Deferred

income taxes of $18,000 have been provided on the difference in depreciation and amortization for leasehold improvements, office furniture and fixtures acquired since June 1, 1971, computed by the double-declining balance method for tax purposes and the straight-line method for financial reporting purposes. The liability for taxes on income ($564,000 after reduction for estimated tax payments) at May 26, 1972 is included in accounts payable and accrued expenses.

9. STOCKHOLDERS' EQUITY:

The capital stock of the Company is composed of the following at May 26, 1972:

	Number of shares				
Description	Authorized	Issued	Outstanding	In treasury	Amount
Common, par value $1, Class A (voting)	150,000	150,000	110,948	39,052	$ 150,000
Common, par value $1, Class B (non-voting)	150,000	150,000	149,080	920	150,000
Preferred, par value $100, Class A	55,000	16,248	10,273	5,975	1,624,800
Preferred, par value $100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	-	350,000
Preferred, par value $100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	-	100,000
Preferred, par value $100, Class D, 6% cumulative	10,000	-	-	-	-
					$2,374,800

The Company has granted stock options (at option prices not less than fair market value as determined by the Company) to subordinated lenders to purchase Class B, non-voting common stock as follows:

Option granted	Exercise amount	Expiration date
Shares equal to 2% of total Class A and Class B common stock issued and outstanding at the exercise date	2% of total stockholders' equity at exercise date	1976
10,007 shares	$25 per share	1975
2,000 shares	$35,000	Upon termination of subordination agreement

The exercise of these options is subject to the written approval of the New York Stock Exchange.

Subject to certain anti-dilution provisions, the 3,500 shares of Class B preferred stock are convertible, in whole but not in part, into 3,500 shares each of Class A and Class B common stock and the 1,000 shares of Class C preferred stock are convertible, in whole but not in part, into 2,000 shares of Class B common stock.

As of May 26, 1972, $768,000 included in miscellaneous receivables in the accompanying consolidated balance sheet was due from employees in connection with the purchase of the Company's capital stock.

10. NET CAPITAL REQUIREMENTS:

The Company is required to comply with a New York Stock Exchange regulation which provides that the Company maintain a ratio of aggregate indebtedness to net capital, as defined, not exceeding 15 to 1. The excess net capital as computed under this rule was approximately $2,878,000 at May 26, 1972.

11. COMMITMENTS AND CONTINGENCIES:

There are various lawsuits pending against the Company which, in the opinion of management, will be resolved with no material adverse effect on the financial condition of the Company.

Aggregate rental commitments at May 26, 1972 under material noncancellable leases for premises were approximately $34,650,000 payable as follows:

Fiscal year ending	Amount
May 25, 1973	$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978-1991	20,475,000

In the normal course of business, the Company enters into underwriting commitments. Transactions relating to underwriting commitments which were open as of May 26, 1972 and subsequently settled, had no material effect on the financial statements at that date.

12. PROFIT SHARING PLAN:

The Company has a non-contributory profit sharing plan, qualified under the Internal Revenue Code, which covers substantially all employees with more than one year's service. The plan is funded through a self-administered trust and may be terminated at any time by the Company. Contributions to the Trust are made at the sole discretion of the Company's Board of Directors. The amount charged to income during the year was $150,000.

13. EARNINGS PER SHARE:

Earnings per common share and common equivalent share were computed by dividing net earnings by the weighted-average number of Class A voting and Class B non-voting common shares and common share equivalents outstanding during the year. The number of common share equivalents outstanding included, (1) weighted-average of 6,417 shares issuable on conversion of the Class B preferred stock, (2) weighted average of 1,360 shares issuable on conversion of the Class C preferred stock and (3) 600 shares issuable on exercise of stock options which are dilutive. All other stock options outstanding are anti-dilutive and are excluded in computing earnings per share.

EXHIBIT D TO COMPLAINT.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

REPORT ON EXAMINATION OF CONSOLIDATED FINANCIAL STATEMENTS

FIVE YEARS ENDED MAY 26, 1972

TOUCHE ROSS & CO.

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

REPORT ON EXAMINATION OF CONSOLIDATED FINANCIAL STATEMENTS

FIVE YEARS ENDED MAY 26, 1972

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 21, 1972

Board of Directors
Weis, Voisin & Co., Inc.
New York, New York

We have examined the accompanying consolidated balance sheet of Weis, Voisin & Co., Inc. and subsidiaries as of May 26, 1972, and the related statement of earnings for the five years then ended and the related statements of stockholders' equity and changes in financial position for the three years then ended. Our examination was made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned consolidated financial statements present fairly the financial position of Weis, Voisin & Co., Inc. and subsidiaries at May 26, 1972, and the results of their operations and the changes in their financial position for the periods indicated, in conformity with generally accepted accounting principles applied on a consistent basis.

Touche Ross & Co.
Certified Public Accountants

WEIS, VOISIN & CO., INC.
AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF EARNINGS

	Year ended May 31, 1968	1969	1970	1971	Year (52 weeks) ended May 26, 1972 (Note A)
Revenues (Note B):					
Commissions (Note C):					
Customers	$10,069,999	$13,769,505	$10,834,529	$13,533,183	$19,160,975
Clearing brokers	8,077,966	9,684,578	7,387,924	3,011,337	762,745
Investment banking (Note D)	471,190	3,359,274	2,446,189	1,595,898	5,191,106
Principal transactions (Note E)	974,778	425,719	2,825,483	1,336,104	2,288,365
Interest (Note F)	2,378,745	3,532,765	4,979,995	2,748,397	3,488,607
Fees	348,755	385,860	298,150	803,270	873,707
Other	166,798	447,920	525,850	455,016	161,718
	22,488,171	31,605,621	29,298,120	23,484,205	31,847,303
Expenses:					
Employee compensation (Note G)	8,485,466	13,811,272	11,852,884	10,605,677	15,575,609
Commissions - clearing brokers	5,788,888	7,027,742	5,844,894	1,922,969	456,247
Floor brokerage commissions	1,470,679	1,539,924	1,044,958	861,370	892,825
Interest	1,128,850	1,589,146	3,112,488	2,247,205	3,120,501
Office and equipment rentals	784,998	1,423,922	1,971,289	2,074,299	3,024,609
Communications	777,153	1,219,448	2,023,393	1,842,214	2,596,221
Other operating expenses	2,115,091	4,114,189	1,624,121	3,245,782	4,194,017
	20,461,045	30,745,643	28,673,227	22,799,516	30,060,029
EARNINGS BEFORE TAXES ON INCOME	2,027,126	859,978	624,893	684,689	1,787,274
Taxes on income (Note H)	882,000	418,000	206,000	316,000	765,000
NET EARNINGS	$ 1,145,126	$ 441,978	$ 418,893	$ 348,689	$ 1,022,274
Weighted average number of common and common equivalent shares outstanding (Notes B and I)	211,429	213,136	238,605	219,114	234,204
Earnings per common and common equivalent share (Notes E, H and I)	$5.42	$2.07	$1.76	$1.59	$4.36

See notes to consolidated statement of earnings

TOUCHE ROSS & CO.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

NOTES TO CONSOLIDATED STATEMENT OF EARNINGS

NOTE A:

In 1972 the Company adopted a fiscal year consisting of the fifty-two or fifty-three week period ending the last Friday of May. Prior to 1972, the Company's fiscal year ended on May 31.

Security transactions are recorded in the accounts on settlement date. Commission income and related expenses for transactions executed but not settled are accrued on financial statement dates.

NOTE B:

As discussed in Note 2 to the consolidated financial statements, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hochstin & Trotta, Inc., and acquired certain selected assets of Winslow, Cohu & Stetson, Incorporated and undertook to liquidate its assets and liabilities. The statement of earnings reflects operations of these acquisitions from their respective acquisition dates. Separate statements of operations of these companies are not included because both acquisitions were of offices, registered representatives and customers together with related assets. Since processing operations and associated costs of both companies have been eliminated, presentation of past operational data and pro forma statements of operations for periods prior to acquisition would not be meaningful.

The statement of earnings reflects operations of VCL Associates, a limited partnership, all of whose assets and liabilities were transferred to the Company on May 27, 1971 (see Notes H and 2). The weighted average number of common and common equivalent shares outstanding for years prior to the date of acquisition reflect retroactively the shares issued in connection with the acquisition. Net earnings of this company prior to its acquisition have been transferred to Additional Paid-in Capital.

NOTE C:

Details of commission income are as follows:

Year ended	Listed	Over-the-counter	Mutual funds	Commodities	Total
May 31, 1968	$14,991,050	$2,884,241	$157,323	$115,291	$18,147,905
May 31, 1969	17,497,592	5,190,585	669,449	96,457	23,454,083
May 31, 1970	14,002,091	3,856,612	261,732	102,018	18,222,453
May 31, 1971	13,764,538	2,091,596	422,929	265,457	16,544,520
May 26, 1972	15,475,771	3,143,198	834,209	470,542	19,923,720

NOTE D:

Investment banking income is as follows:

Year ended	Underwriting management - manager	Syndicate member	Total
May 31, 1968	$ 185,087	$ 286,103	$ 471,190
May 31, 1969	3,002,414	356,860	3,359,274
May 31, 1970	1,598,406	847,783	2,446,189
May 31, 1971	69,236	1,527,662	1,596,898
May 26, 1972	2,334,849	2,856,337	5,191,186

NOTE E:

Securities owned and securities sold but not yet purchased are valued at quoted market or fair value resulting in unrealized appreciation/(depreciation), which is reflected in principal transactions for each period. The change in unrealized appreciation/(depreciation) as shown below is due not only to fluctuations in the quoted market or fair value of individual securities owned, but it is also affected by gains/(losses) realized on transactions in these securities during the period. For tax purposes securities owned are valued at cost. The change in unrealized appreciation/(depreciation) by year, the effect on net earnings and the related per share effect are as follows:

Year ended	Change in unrealized appreciation/ (depreciation)	Increase/ (decrease) in net earnings	
		Amount	Per share
May 31, 1968	$ 418,448	$ 301,348	$ 1.43
May 31, 1969	(507,843)	(365,343)	(1.71)
May 31, 1970	20,233	13,533	.06
May 31, 1971	319,474	214,074	.98
May 26, 1972	285,516	170,667	.73

NOTE F:

Interest income is derived from interest-bearing securities and deposits, and from credit extended to customers for security purchases on margin and is as follows:

Year ended	Interest on margin accounts	Other	Total
May 31, 1968	$2,352,305	$26,440	$2,378,745
May 31, 1969	3,465,047	67,718	3,532,765
May 31, 1970	4,966,369	13,626	4,979,995
May 31, 1971	2,721,393	27,004	2,748,397
May 26, 1972	3,390,844	17,763	3,408,607

NOTE G:

The Company has a noncontributory profit-sharing plan, qualified under the Internal Revenue Code, which covers substantially all employees with more than one year's service. The plan is funded through a self-administered trust and may be terminated at any time by the Company. Contributions to the trust are made at the sole discretion of the Company's Board of Directors. The amount charged to income was $154,000 in 1968, $209,000 in 1969, none in 1970 and 1971, and $150,000 in 1972.

NOTE H:

The effective rate of taxes on income varies from year to year due primarily to the different tax rates applied to ordinary income and capital gains, investment tax credits, and the varying tax rates during the five-year period. The Company accounts for the investment tax credits, which amounted to $10,000 in 1968, $87,000 in 1969, none in 1970 and 1971, and $113,000 in 1972, by use of the flow-through method. State and local taxes included in taxes on income were $77,000 in 1968, $18,000 in 1969, $70,000 in 1970, $52,000 in 1971 and $112,000 in 1972. As discussed in Notes B and 2, VCL Associates operated as a limited partnership. Pro forma provisions for taxes on income which would have been required had this business operated as a corporation are included in taxes on income in the following amounts: 1968 - $2,900, 1969 - $24,000, 1970 - $207,800, and 1971 - $2,200. These additional tax provisions reduced consolidated net earnings per share in 1968 by $.01, 1969 - $.11, 1970 - $.87, and 1971 - $.01.

NOTE I:

Earnings per common and common equivalent share for each of the four years ended May 31, 1971 were computed by dividing net earnings by the weighted-average number of Class A voting and Class B nonvoting common shares outstanding during the respective years since there were no dilutive common share equivalents outstanding during this period. For the year (52 weeks) ended May 26, 1972 the weighted-average number of common shares was increased by common share equivalents including (1) weighted-average of 6,417 shares issuable on conversion of the Class B preferred stock, (2) weighted-average of 1,360 shares issuable on conversion of the Class C preferred stock and (3) 600 shares issuable on exercise of stock options which are dilutive. All other stock options outstanding during this period are antidilutive and were excluded in computing earnings per share.

NOTE J:

No dividends have been paid by the Company.

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEET

MAY 26, 1972

ASSETS

Cash	$ 1,842,307
Deposits with clearing organizations and others	753,033
Receivables from brokers and dealers (Note 3)	8,775,852
Receivables from customers (Note 3)	76,376,206
Secured demand notes of subordinated lenders (collateralized by cash of $28,206, and securities at quoted market $6,625,570) (Note 4)	4,226,794
Miscellaneous receivables (Note 9)	3,763,785
Securities owned, at quoted market or fair value (Note 5)	4,492,365
Securities held under subordination agreements, at quoted market (Note 4)	5,460,751
Exchange memberships:	
Owned - at cost (last sales prices $1,044,606)	1,289,938
Held under subordination agreements, at last sales prices (Note 4)	421,494
Leasehold improvements, office furniture and fixtures - at cost, less accumulated amortization and depreciation of $1,008,058 (Note 6)	3,513,321
Excess of investment over net assets acquired, less accumulated amortization of $76,465 (Note 2)	2,217,403
Miscellaneous other assets (Note 2)	2,396,602
	$115,529,851

LIABILITIES AND STOCKHOLDERS' EQUITY

Short-term bank loans (Note 7)		$ 54,487,245
Payables to brokers and dealers (Note 3)		14,311,794
Payables to customers (Note 3)		16,770,379
Securities sold but not yet purchased, at quoted market (Note 5)		2,967,457
Accounts payable and accrued expenses (Note 8)		2,952,582
Due to lessors on lease contracts capitalized (Note 6)		1,475,215
Subordinated liabilities and stockholders' equity:		
Liabilities subordinated to all claims of general creditors (Note 4)	$14,977,921	
Stockholders' equity (Notes 9 and 10):		
Capital stock	2,374,800	
Additional paid-in capital	2,767,078	
Retained earnings	3,811,397	
	8,953,275	
Less treasury stock - at cost	1,366,017	
	7,587,258	22,565,179
Contingencies and commitments (Note 11)		
		$115,529,851

See notes to consolidated financial statements

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

	Capital stock issued							
	Number of shares							
	Common		Preferred					
	Class A par $1.00	Class B par $1.00	Class A par $100.00	Class B par $100.00	Class C par $100.00	Amount	Additional paid-in capital	Retained earnings
Balance June 1, 1969 - as previously reported	144,700	150,000	14,961	-	-	$1,790,812	$ 967,778	$2,331,404
Adjustment to reflect acquisition of VCL Associates (Notes 2 and B)	-	-	-	-	-	-	(142,659)	-
Balance June 1, 1969 - as adjusted	144,700	150,000	14,961	-	-	1,790,812	825,119	2,331,404
Issued	5,300	-	1,287	-	-	133,988	127,450	-
Excess of proceeds over cost of treasury stock sold:								
Common Class A 17,075 shares	-	-	-	-	-	-	344,755	-
Common Class B 40,626 shares	-	-	-	-	-	-	628,025	-
Net earnings for the year ended May 31, 1970 (Note B)	-	-	-	-	-	-	305,142	113,751
Pro forma taxes on income (Note H)	-	-	-	-	-	-	207,800	-
Balance May 31, 1970	150,000	150,000	16,248	-	-	1,924,800	2,438,291	2,445,155
Excess of proceeds over cost of treasury stock sold - common Class A 9,750 shares	-	-	-	-	-	-	82,581	-
Excess of cost over proceeds of treasury stock sold - common Class B 14,250 shares	-	-	-	-	-	-	(57,872)	-
Net earnings for the year ended May 31, 1971 (Note B)	-	-	-	-	-	-	4,721	343,968
Pro forma taxes on income (Note H)	-	-	-	-	-	-	2,200	-
Balance May 31, 1971	150,000	150,000	16,248	-	-	1,924,800	2,469,921	2,789,123
Issued	-	-	-	3,500	1,000	450,000	-	-
Excess of proceeds over cost of treasury stock sold:								
Common Class A 29,375 shares	-	-	-	-	-	-	17,827	-
Common Class B 40,750 shares	-	-	-	-	-	-	279,330	-
Net earnings for the year ended May 26, 1972	-	-	-	-	-	-	-	1,022,274
Balance May 26, 1972	150,000	150,000	16,248	3,500	1,000	$2,374,800	$2,767,078	$3,811,397

See notes to consolidated financial statements

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WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

	Capital stock in treasury			
	Number of shares			
	Common		Preferred	
	Class A par $1.00	Class B par $1.00	Class A par $100.00	Cost
Balance June 1, 1969 - as previously reported	47,950	41,250	4,157	$1,211,341
Adjustment to reflect shares issued in connection with acquisition of VCL Associates (Notes 2 and B)	-	(12,000)	-	(260,000)
Balance June 1, 1969 - as adjusted	47,950	29,250	4,157	951,341
Purchased	19,000	21,750	9,297	1,802,184
Sold	(17,075)	(40,626)	(6,945)	(1,153,493)
Balance May 31, 1970	49,875	10,374	6,509	1,600,032
Purchased	21,250	28,000	1,191	1,037,814
Sold	(9,750)	(14,250)	(1,286)	(474,917)
Balance May 31, 1971	61,375	24,124	6,414	2,162,929
Purchased	7,052	17,546	4,961	835,057
Sold	(29,375)	(40,750)	(5,400)	(1,631,969)
Balance May 26, 1972	39,052	920	5,975	$1,366,017

See notes to consolidated financial statements

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

	Year ended		
	May 31, 1970	May 31, 1971	May 26, 1972
SOURCE OF FUNDS:			
Operations:			
Net earnings exclusive of earnings applicable to VCL Associates credited to additional paid-in capital	$ 113,751	$ 343,968	$ 1,[illegible]
Noncash charges - depreciation and amortization	266,497	426,422	538,410
	380,248	770,390	1,560,684
Decrease in:			
Deposits with clearing organizations and others	238,940	-	-
Receivables from brokers and dealers	7,320,413	446,876	-
Receivables from customers	5,709,490	13,543,056	-
Miscellaneous receivables	-	1,263,919	-
Securities held under subordination agreements	-	752,398	-
Exchange memberships:			
Owned	-	190,000	-
Held under subordination agreements	801,828	-	-
Increase in:			
Short-term bank loans, collateralized by customers' margin account securities	18,737,500	-	31,073,040
Short-term bank loans, collateralized by securities owned by the Company or covered by subordination agreements	-	1,300,000	5,612,245
Payables to brokers and dealers	-	3,392,640	5,062,360
Payables to customers	-	-	5,642,327
Securities sold but not yet purchased	217,361	-	2,833,092
Accounts payable and accrued expenses	-	837,782	-
Due to lessors on lease contracts capitalized	487,763	320,424	-
Liabilities subordinated to all claims of general creditors	933,576	352,089	6,474,117
Proceeds from the issue of:			
Common stock	132,750	-	-
Preferred stock	128,688	-	450,000
Proceeds from sale of treasury stock:			
Cost	1,153,493	474,917	1,631,969
Excess of proceeds over cost	972,780	24,709	297,157
Equity of VCL Associates acquired as of May 27, 1971	-	637,204	-
Other sources	-	-	61,550
	37,214,830	24,306,404	60,698,541

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

CONSOLIDATED STATEMENT OF CHANGES IN FINANCIAL POSITION

	Year ended May 31, 1970	Year ended May 31, 1971	Year ended May 26, 1972
APPLICATION OF FUNDS:			
Increase in:			
Deposits with clearing organizations and others	$ -	$ 154,286	$ 487,317
Receivables from brokers and dealers	-	-	4,064,603
Receivables from customers	-	-	42,799,812
Secured demand notes of subordinated lenders	-	-	4,226,794
Miscellaneous receivables	2,816,756	-	1,397,252
Securities owned	44,199	1,413,137	924,121
Securities held under subordination agreements	1,174,127	-	146,933
Exchange memberships:	696,000	-	154,050
Owned	-	64,754	152,768
Held under subordination agreements	543,416	39,862	1,750,911
Miscellaneous other assets			
Decrease in:			
Short-term bank loans, collateralized by customers' margin account securities	-	14,535,540	-
Payables to brokers and dealers	20,486,933	-	-
Payables to customers	7,985,597	5,695,133	-
Securities sold but not yet purchased	-	662,445	-
Accounts payable and accrued expenses	298,020	-	-
Purchase of leasehold improvements, furniture and fixtures	606,969	1,400,183	1,937,996
Purchase of treasury stock	1,802,184	1,037,814	835,057
Excess of investment over net assets acquired	-	-	2,217,403
	36,454,201	25,003,154	61,095,017
INCREASE/(DECREASE) IN CASH	$ 760,629	$ (696,750)	$ (396,476

See notes to consolidated financial statements

WEIS, VOISIN & CO., INC.

AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. PRINCIPLES OF CONSOLIDATION:

The consolidated financial statements include the accounts of Weis, Voisin & Co., Inc. and all of its subsidiaries. The results of operations of companies purchased are included from the dates of acquisition. All significant intercompany balances and transactions have been eliminated in consolidation. The parent company accounts for its investments in subsidiaries by the equity method.

2. ACQUISITIONS:

Scheinman, Hochstin & Trotta, Inc.:

As of October 1, 1971, the Company acquired certain specified assets and assumed certain specified liabilities of Scheinman, Hochstin & Trotta, Inc. (SH&T), a former member firm of the New York Stock Exchange. This acquisition has been accounted for as a purchase and the excess of investment over net assets acquired of $2,293,868 is being amortized over a twenty-year period.

As part of the purchase agreement a subordinated lender of SH&T agreed to become a subordinated lender of the Company and to indemnify the Company to a maximum of $4,000,000 in the event the assumed liabilities exceeded the acquired assets. Through May 26, 1972 the liabilities assumed exceed the assets acquired by approximately $750,000 which is included in miscellaneous other assets.

Thomas J. Deegan Company, Inc.:

As of July 1, 1971, the Company acquired the outstanding capital stock of Thomas J. Deegan Company, Inc. in exchange for 3,500 shares of its 1% cumulative convertible preferred par value $100, Class B stock. The Company is accounting for this acquisition as a purchase.

VCL Associates:

As of May 27, 1971, the business and all of the assets and liabilities of VCL Associates, a limited parnership, were transferred to the Company in exchange for 12,000 shares of Class B common stock. Prior to the transfer, the Company and VCL Associates were "under common control" and the accounting for the transaction is similar to that used in a pooling of interests. The number of common shares outstanding for years prior to the date of acquisition reflect retroactively the shares issued in connection with the acquisition.

Winslow, Cohu & Stetson, Incorporated:

As of September 29, 1969, the Company acquired certain selected assets of a former New York Stock Exchange member firm, Winslow, Cohu & Stetson, Incorporated (WCS) and undertook to liquidate its assets and liabilities. This acquisition has been accounted for as a purchase. WCS assets realized and liabilities liquidated through May 26, 1972 have resulted in a net deficiency of approximately $411,000 which, in accordance with the purchase agreement, has been charged in the financial statements against the subordinated accounts ($4,315,402 at May 26, 1972) transferred from WCS. In the event that the assets realized and liabilities liquidated result ultimately in a net surplus, the Company will issue a 20-year subordinated debenture to the former stockholders of WCS in an amount equal to the net surplus.

3. RECEIVABLES FROM AND PAYABLES TO BROKERS DEALERS AND CUSTOMERS:

The components of receivables from and payables to brokers and dealers as of May 26, 1972 are as follows:

Securities failed to deliver:	
Outstanding less than 30 days	$ 5,051,188
Outstanding 30 days or more	195,682
Deposits paid for securities borrowed	2,641,600
Other	887,382
Total receivables from brokers and dealers	$ 8,775,852
Securities failed to receive:	
Outstanding less than 30 days	$ 5,386,021
Outstanding 30 days or more	256,668
Deposits received for securities losses	8,433,450
Other	235,655
Total payables to brokers and dealers	$14,311,794

"Fails" represent the contract value of securities which have not been received or delivered by settlement date.

Receivables from and payables to customers represent the dollar balances arising in connection with normal cash and margin transactions. The receivables are collateralized by securities with a quoted market of $100,306,000 held by the Company which are not reflected in the accompanying consolidated financial statements. Free credit balances totaling approximately $6,792,000 at May 26, 1972 are included in payables to customers. Accounts of officers, directors and stockholders are included in receivables from and payables to customers since they are subject to the normal terms and regulations as to payment and, in the aggregate, are not significant.

4. LIABILITIES SUBORDINATED TO ALL CLAIMS OF GENERAL CREDITORS:

Certain creditors of the Company have signed agreements subordinating their debentures, exchange memberships or securities accounts to all claims of general creditors, and thus the respective amounts are available to the Company in computing net capital under the New York Stock Exchange rule regarding capital requirements (see Note 11). These agreements generally specify release, payment, or redemption no less than six months following the date on which the lender demands termination subject to approval of the New York Stock Exchange. These liabilities at May 26, 1972 are summarized as follows:

	Rate of interest	
Debentures	7 - 10%	$ 3,110,275
Secured demand notes	8%	4,255,000
Exchange memberships	6 - 8%	421,494
Equities in securities accounts:		
Securities at quoted market	2.8 - 5%	5,460,751
Cash	4 - 10%	1,730,401
		$14,977,921

5. SECURITIES OWNED:

Securities owned at May 26, 1972 consist of the Company's regular trading and investment accounts and are summarized as follows:

		Cost
Marketable securities - at quoted market:		
U.S. Government bonds	$ 330,200	$ 332,[illegible]
Municipal bonds	175,800	162,587
Corporate debentures and notes	69,718	69,608
Corporate stocks	1,730,167	1,745,421
Arbitrage (convertible within 30 days)	1,236,572	1,151,459
	3,542,457	3,461,635
Securities not readily marketable - at fair value	949,908	508,244
	$4,492,365	$3,969,879
Marketable securities sold but not yet purchased - at quoted market:		
Corporate debentures and notes	$ 24,734	$ 24,700
Corporate stocks	1,682,327	1,671,581
Arbitrage (convertible within 30 days)	1,260,396	1,192,206
	$2,967,457	$2,888,487

Quoted market has been determined by reference to available quotations as to marketable securities. The fair values of securities not readily marketable have been determined by management. Fair values as determined are, in the aggregate, not less than cost.

The following securities included above have quoted market or fair values which exceed 5% of the balance sheet caption:

	Quoted market or fair value	Cost
Marketable securities:		
Alaska Interstate convertible debenture 6%, February 1, 1996	$404,421	$408,236
Harmony Gold Mining Ltd.	240,663	212,596
Security National Bank of Long Island	327,500	430,000
Securities not readily marketable -		
Electro-Catheter	234,983	48,330
Securities sold but not yet purchased:		
Alaska Interstate	396,250	435,239
Channel Companies, Inc.	948,500	948,500
Harmony Gold Mining Ltd. ADR	259,125	215,437
Medallion Leisure Corp.	346,000	346,000

6. LEASEHOLD IMPROVEMENTS, OFFICE FURNITURE AND FIXTURES:

Leasehold improvements, office furniture and fixtures include approximately $2,300,000 of such assets acquired under lease contracts. The net book value of these assets of approximately $1,700,000 collateralizes the amounts due to lessors on lease contracts capitalized. The Company computes depreciation and amortization by the straight-line method for financial statement purposes (see Note 8).

Maintenance and repairs are charged to expense as incurred. Renewals and betterments are capitalized. The cost of assets retired or otherwise disposed of is removed from the asset accounts and the related reserve for depreciation is removed from the reserve account; any resulting gain or loss is included in income.

7. SHORT-TERM BANK LOANS:

The Company borrows from banks primarily to finance customers' purchases on margin and dealer inventory positions. At May 26, 1972, bank borrowings of $6,912,245 were collateralized by securities owned by the Company or covered by subordination agreements having a quoted market of $12,807,000 and borrowings of $47,575,000 were collateralized by securities owned by customers having a quoted market of $71,373,000. The customer-owned securities pledged are those securities for which the Company has the right of hypothecation under signed margin agreements.

8. ACCOUNTS PAYABLE AND ACCRUED EXPENSES:

Included in accounts payable and accrued expenses are the following:

Accrued salaries and commissions	$653,000
Federal, state and local taxes on income	564,000
Interest payable on short term-bank loans and subordinated borrowings	280,000
Unclaimed dividends and interest items	218,000

Deferred income taxes of $18,000 have been provided on the difference in depreciation and amortization for leasehold improvements, office furniture and fixtures acquired since June 1, 1971, computed by the double-declining balance method for tax purposes and the straight-line method for financial reporting purposes.

9. STOCKHOLDERS' EQUITY:

The capital stock of the Company is composed of the following at May 26, 1972:

	Number of shares				
Description	Authorized	Issued	Outstanding	In treasury	Amount
Common, par value $1, Class A (voting)	150,000	150,000	110,948	39,052	$ 150,000
Common, par value $1, Class B (non-voting)	150,000	150,000	149,080	920	150,000
Preferred, par value $100, Class A	55,000	16,248	10,273	5,975	1,624,800
Preferred, par value $100, Class B, 1% cumulative, convertible	3,500	3,500	3,500	-	350,000
Preferred, par value $100, Class C, 1% cumulative, convertible	2,500	1,000	1,000	-	100,000
Preferred, par value $100, Class D, 6% cumulative	10,000	-	-	-	-
					$2,374,800

The Company has granted stock options (at option prices not less than fair market value as determined by the Company) to subordinated lenders to purchase Class B, nonvoting common stock which are currently exercisable as follows:

Option granted	Exercise amount	Expiration date
Shares equal to 2% of total Class A and Class B common stock issued and outstanding at the exercise date (5,200 shares at May 26, 1972)	2% of total stockholders' equity at exercise date ($29.18 per share, $151,745 total at May 26, 1972)	1976
10,907 shares	$25 per share; $272,675 total	1975
2,000 shares	$17.50 per share; $35,000 total	Upon termination of subordination agreement

The exercise of these options is subject to the written approval of the New York Stock Exchange.

Subject to certain antidilution provisions, the 3,500 shares of Class B preferred stock are convertible, in whole but not in part, into 3,500 shares each of Class A and Class B common stock and the 1,000 shares of Class C preferred stock are convertible, in whole but not in part, into 2,000 shares of Class B common stock. An increase of 150,000 shares in the number of Class A and Class B common shares authorized was approved by the stockholders in June 1972.

As of May 26, 1972, $768,000 included in miscellaneous receivables in the accompanying consolidated balance sheet was due from employees in connection with the purchase of the Company's capital stock.

10. NET CAPITAL REQUIREMENTS:

The Company is required to comply with a New York Stock Exchange regulation which provides that the Company maintain a ratio of aggregate indebtedness to net capital, as defined, not exceeding 15 to 1. The excess net capital as computed under this rule was approximately $2,878,000 at May 26, 1972.

11. COMMITMENTS AND CONTINGENCIES:

There are various lawsuits pending against the Company which, in the opinion of management, will be resolved with no material adverse effect on the financial condition of the Company.

Aggregate rental commitments at May 26, 1972 under material noncancellable leases for premises were approximately $34,650,000 payable as follows:

Fiscal year ending	Amount
May 25, 1973	$ 3,000,000
May 31, 1974	2,825,000
May 30, 1975	2,875,000
May 28, 1976	2,750,000
May 27, 1977	2,725,000
May 26, 1978-1991	20,475,000

In the normal course of business, the Company enters into underwriting commitments. Transactions relating to underwriting commitments which were open as of May 26, 1972 and subsequently settled, had no material effect on the financial statements at that date.

DEFENDANT'S ANSWERS AND OBJECTIONS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- X

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	76 Civ. 1981 (I.B.W.)
Plaintiffs,	:	
-against-	:	ANSWERS TO INTERROGATORIES
TOUCHE ROSS & CO.,	:	
Defendant.	:	

- X

Defendant, pursuant to Rule 33, F. R. Civ. P., in compliance with the stipulation and order herein dated July 23, 1976, without waiving any objections (including but not limited to the accompanying objections) available to it, without consenting to this Court's jurisdiction and on the basis of presently-known information, answers Plaintiffs' First Set of Interrogatories as follows:

Interrogatory No. 1

State the form or forms of business organization of Touche Ross, the business in which it is primarily engaged, its principal place of business and the number of its branch offices.

Answer to Interrogatory No. 1

Defendant is a partnership, is a firm of certified public accountants, has its executive office at 1633 Broadway, New York, New York, and has offices in 75 other cities in the United States.

Interrogatory No. 2

For each person employed by or representing Touche Ross who performed professional accounting or auditing services in connection with the May 26 Audit state the following:

(a) Full name;

(b) Present or last known residence address;

(c) Present or last known business address;

(d) Job title and description of assigned tasks during the May 26 Audit;

(e) Number of hours worked on the May 26 Audit;

(f) Name of each person who exercised immediate supervision and control of the tasks referred to in subparagraph (d) above.

Answer to Interrogatory No. 2

The following is (a) a list of persons who were partners of or employed by defendant and who performed services referred to in answer to Interrogatory No. 1, (b) the title of each at that time, (c) hours spent by each in performing such services, and (d) the present or last known residence and business address of each:

Name	Title	Hours	Present or Last Known Residence and Business Address
Louis Haag	Partner	85 1/2	Deceased
Edward Weinstein	Partner	23	445 Harding Drive South Orange New Jersey 07079 Touche Ross & Co. 1633 Broadway New York New York 10019
James Konkel	Partner	5 1/2	106 Willow Street Brooklyn New York 11201 Touche Ross & Co. 1633 Broadway New York New York 10019
Karl Brunhuber	Manager	327	35-44 167th Street Flushing New York 11358 T. F. Jackson 42-12 28th Street Long Island City New York
John Burkhardt	Manager	1	89-10 118th Street Richmond Hill New York 11418 Touche Ross & Co. 1633 Broadway New York New York 10019
Stuart Newman	Manager	12 1/2	265 Gramercy Drive Jericho New York 11753 Touche Ross & Co. 1633 Broadway New York New York 10019

Name	Title	Hours	Present or Last Known Residence and Business Address
Joseph Puglisi	Supervisor	461 1/2	331 Beverly Road Douglaston New York 11363 Touche Ross & Co. 1633 Broadway New York New York 10019
Irwin Goldberg	Supervisor	11	31 Truman Drive Marlboro New Jersey 07[illegible] Touche Ross & Co. 1633 Broadway New York New York 10019
Lawrence Katz	Supervisor	13 1/2	64 Sargent Road Freehold New Jersey 07728 Touche Ross & Co. 1633 Broadway New York New York 10019
Louis Steiner	Supervisor	6	245 East 35th Street New York New York 10016
James Reilly	Senior	11	318 Woodland Avenue Avon New Jersey 07717
John Ahern	Semi-senior	7	219 East 84th St. New York New York 10028 Hurdman & Cranstoun 140 Broadway New York New York

Name	Title	Hours	Present or Last Known Residence and Business Address
Michael Cox	Semi-senior/ Senior	141	98 Hoyt Street Stamford Connecticut 06905 Touche Ross & Co. One Landmark Square Stamford Connecticut 06901
Kevin Crawford	Semi-senior	3	2 Birchwood Court Apt. 2-O Mineola New York 11501
Richard Craig	Semi-senior	7	20 Randall Avenue Apt. 2U Freeport New York 11520 Eastern States Bankcard Association 4 Ohio Drive Lake Success New York
Stephen Goldenberg	Semi-senior	8	600 Willis Avenue Williston Park New York 11596
John Hofmann	Semi-senior	6	532 Woodbridge Ave. Avenel New Jersey 07001
W. Manniello	Semi-senior	6	
Joseph Panasci	Semi-senior	267 1/2	562 West End Ave. Apt. 1C New York New York 10024 Touche Ross & Co. 1633 Broadway New York New York 10019

Name	Title	Hours	Present or Last Known Residence and Business Address
Richard Portney	Semi-senior	279	2 Pheasant Run Great Neck New York 11024
Art Schmeiser	Semi-senior	7	119 Rivera Drive S. Massapequa New York 11758 Touche Ross & Co. 1633 Broadway New York New York 100
Ray Sloan	Semi-senior	6	3021 Avenue W Apt. 1F Brooklyn New York 11229
Linda Kushner (Sleight)	Semi-senior	6	111-20 73rd Avenue Forst Hills New York 11375
George Stano	Semi-senior	6	2821 Briggs Avenue Bronx New York 10458
Ranzi Zaki	Semi-senior/ Senior	486	97-11 Horace Harding Expressway Lefrak City New York 11368
Robert Gubitosi	Semi-senior	349	58 Circle Drive Syosset New York 11791 Goldman, Sachs & Co. 55 Broad Street New York New York 10004
James Blow	Assistant	18	116-26 231st Street Cambria Heights New York 11411

Name	Title	Hours	Present or Last Known Residence and Business Address
James Buck	Assistant	216 1/2	97-05 Horace Harding Expressway Lefrak City New York 11368 Touche Ross & Co. 1633 Broadway New York New York 10019
Michael Christ	Assistant	24	221 Atlantic Avenue Massapequa Park New York 11762
Vincent Criscillo	Assistant	3	1337 71st Street Brooklyn New York 11228
Ellen Francke	Assistant	69	18 Gramercy Park S. New York New York 10003
Philip Gruber	Assistant	305	360 East 65th Street New York New York 10021
Thomas Hogan	Assistant	360	142-24 38th Avenue Flushing New York 11354
John Joanides	Assistant	223	489 Baldwin Path Deer Park New York 11729
Emil Molinaro	Assistant	6	601 Mt.Prospect Ave. Clifton New Jersey 07012 Touche Ross & Co. 1633 Broadway New York New York 10019

Name	Title	Hours	Present or Last Known Residence and Business Address
Jay Mostel	Assistant	21	14 Bogardus Place New York New York 10040
Joe Nocera	Assistant	7	515 East 12th Street New York New York 10009 Touche Ross & Co. 1633 Broadway New York New York 10019
Bruce Price	Assistant	95 1/2	529 West 187th St. New York New York 10033
Richard Rankin	Assistant	7	198-12 32nd Avenue Bayside New York 11358
Steven Romm	Assistant	7	16 Magnolia Avenue Hazlet New Jersey 07730 Dreyco International Corp. 1775 Broadway New York New York 10019
Jeff Saltzer	Assistant	7	54 Beatrice Lane Old Bethpage New York 11804 Daniel K. Saltzer & Co. 225 West 34th Street New York New York 10001
Andrew Schwartz	Assistant	258 1/2	1154 East 103rd St. Brooklyn New York 11236
Michael Venitt	Assistant	8	110-35 72nd Road Forest Hills New York 11375

Name	Title	Hours	Present or Last Known Residence and Business Address
N. Ward	Senior	5	
Stanley Itskowitch	Manager	37 1/2	160 East 84th Street New York New York 10028
Mark Berlin	Senior	1/2	10 Columbus Circle New York New York 10019
Harvey Weisberg	Semi-senior	6	296 Fairhaven Boulevard Woodbury New York 11797

Interrogatory No. 3

State the names of the employees of Weis who were your principal contacts and sources of information with respect to the May 26 Audit.

Answer to Interrogatory No. 3

The employees of Weis, Voisin & Co., Inc. who were contacts and sources of information with respect to the services referred to in the answer to Interrogatory No. 4 were the following:

Marie Anastasia,
Janet Belsky,
Mary Farentino,
Fred Galli,
Bernard Harrington,
Joel Kubie,
Sol Leit,
Arthur Levine,
Robert Lynn,
Leon Maggio,
Anthony Marchese,
Louis Pia, and
Others whose names cannot be presently recalled.

Interrogatory No. 4

State the nature of each separate professional service performed by you for Weis since January 1, 1972.

Answer to Interrogatory No. 4

Services in connection with examination of answers to financial questionnaire of Weis, Voisin & Co., Inc., as of May 26, 1972.

Services in connection with examination of answers to financial questionnaire of WVC Asset Management Corp., as of May 26, 1972.

Services in connection with examination of statement of financial condition of Weis, Voisin & Co., Inc., as of May 26, 1972.

Services in connection with examination of consolidated balance sheet of Weis, Voisin & Co., Inc., and subsidiaries as of May 26, 1972, and related statements of earnings, stockholders' equity and changes in financial position for the year (52 weeks) then ended.

Services in connection with examination of consolidated balance sheet of Weis, Voisin & Co., Inc., and subsidiaries as of May 26, 1972, and related statement of earnings for the five years then ended and related statements of stockholders' equity and changes in financial position for the three years then ended.

Interrogatory No. 5

Identify by date, originator and intended recipients each document or oral communication pursuant to which a professional service referred to in Interrogatory No. 4 was performed.

Answer to Interrogatory No. 5

With respect to the services referred to in answer to Interrogatory No. 4, the following documents are identified:

Letter dated December 8, 1971 from defendant to Weis, Voisin & Co., Inc. (Attention: Mr. Arthur Levine)

Letter dated December 13, 1971 from defendant to WVC Asset Management Corp. (Attention: Mr. Joel Kubie)

Interrogatory No. 6

Identify by date, originator and intended recipients each document or oral communication in which results or findings from any professional service referred to in Interrogatory No. 4 were reported.

Answer to Interrogatory No. 6

With respect to the services referred to in answer to Interrogatory No. 4, the following documents are identified:

Report on examination of answers to financial questionnaire as of May 26, 1972, dated July 7, 1972 from defendant to Board of Directors of Weis, Voisin & Co., Inc.

Report on examination of answers to financial questionnaire as of May 26, 1972, dated July 10, 1972, from defendant to Board of Directors of WVC Asset Management Corp.

Report on examination of statement of financial condition as of May 26, 1972, dated July 7, 1972, from defendant to Board of Directors of Weis, Voisin & Co., Inc.

Report on examination of consolidated financial statements, year (52 weeks) ended May 26, 1972, dated July 21, 1972, from defendant to Board of Directors of Weis, Voisin & Co., Inc.

Report on examination of consolidated financial statements, five years ended May 26, 1972, dated July 21, 1972, from defendant to Board of Directors of Weis, Voisin & Co., Inc.

Letter dated October 18, 1972, from defendant to Mr. Arthur Levine, Chairman of Board of Weis, Voisin & Co., Inc.

Interrogatory No. 7

State separately for each professional service referred to in Interrogatory No. 4:

(a) The amount paid by Weis in consideration of such service;

(b) The date or dates on which such payment was made.

Answer to Interrogatory No. 7

The following payments were made to defendant on or about the dates specified, all or substantially all of which payments were for services referred to in the answer to Interrogatory No. 4: $15,000.00 (July 13, 1972), $15,000.00 (July 27, 1972), $15,000.00 (August 16, 1972), $22,500.00 (August 28, 1972), $650.00 (August 30, 1972), $20,000.00 (September 15, 1972), $1,200.00 (October 24, 1972), $15,000.00 (November 13, 1972) and $16,500.00 (December 8, 1972).

TOUCHE ROSS & CO.

By M Drawicki

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DONALD J. TRAWICKI, being duly sworn, deposes and says:

I am a partner of the defendant Touche Ross & Co. I have read the foregoing answers to interrogatories and know the contents thereof and they are true to my own knowledge, information and belief.

Donald J. Trawicki

Sworn to before me this
23rd day of August, 1976.

Werner R. Kamuf
Notary Public

WERNER R. KAMUF
Notary Public, State of New York
No. 24-2024300
Qualified in Kings County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - -x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

- - - - - - - - - - - - - - - - - - - -x

76 Civ. 1981 (I.B.W.)

OBJECTIONS TO INTERROGATORIES

Defendant, pursuant to Rule 33, F. R. Civ. P., and the stipulation and order (the "Stipulation and Order") herein dated July 23, 1976, and without consenting to this Court's jurisdiction, objects to Plaintiffs' First Set of Interrogatories as follows. As used in these objections, (i) the term "Premature" means that discovery of the information sought is premature, and would be unduly burdensome to defendant, by reason of the fact that defendant is preparing to move to dismiss the complaint herein and this action on the grounds that plaintiffs have failed to state a claim upon which relief can be granted and that this Court lacks subject matter jurisdiction, and for related relief; (ii) the term "Non-Preliminary and Non-Structural" means that the information sought is not in accordance with the provision of the Stipulation and Order that "Any . . . interrogatories . . . shall be of a preliminary or structural nature, and shall not seek information on the substance of the causes of action alleged in the complaint"; (iii) the term "Lack of Relevance" means that the interrogatory calls

for information which is not relevant to the subject matter of the pending action and which is not reasonably calculated to lead to the discovery of admissible evidence; (iv) the term "Burden" means that it would be unduly burdensome, oppressive, annoying, embarrassing, time-consuming and/or expensive to require defendant to compile and furnish the information called for, in light of the degree of its relevance and materiality, if any; (v) the term "Lack of Particularity" means that the interrogatory does not state with reasonable particularity the information to be furnished, is vague and ambiguous, and/or is incomprehensible and without sense; (vi) the term "Improper Opinion" means that the interrogatory improperly calls for an opinion, conclusion, contention or inference; (vii) the term "Improper Assumption" means that the interrogatory assumes facts which are not true or accurate; and (viii) the term "Confidential Information" means that the information asked for would involve the disclosure of trade or business secrets or other confidential information, the disclosure of which would be prejudicial to defendant.

Interrogatory No. 1

State the form or forms of business organization of Touche Ross, the business in which it is primarily engaged, its principal place of business and the number of its branch offices.

Objection to Interrogatory No. 1

Defendant objects to Interrogatory No. 1 to the extent that it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. In light of the definition of "Touche Ross" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden, and (c) Lack of Particularity; and

3. Insofar as it uses the terms "principal place of business" and "branch offices", (a) Lack of Relevance, (b) Lack of Particularity, (c) Improper Opinion and (d) Improper Assumption.

Interrogatory No. 2

For each person employed by or representing Touche Ross who performed professional accounting or auditing services in connection with the May 26 Audit state the following:

(a) Full name;

(b) Present or last known residence address;

(c) Present or last known business address;

(d) Job title and description of assigned tasks during the May 26 Audit;

(e) Number of hours worked on the May 26 Audit;

(f) Name of each person who exercised immediate supervision and control of the tasks referred to in subparagraph (d) above.

Objection to Interrogatory No. 2

Defendant objects to Interrogatory No. 2 to the extent that it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. In light of the definitions of "Touche Ross" and "Weis" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

3. In light of the definition of "May 26 Audit" set forth in the Interrogatories, (a) Lack of Particu-

larity and (b) Improper Assumption;

4. Insofar as it seeks a "description of assigned tasks", (a) Non-Preliminary and Non-Structural, (b) Lack of Relevance, (c) Burden and (d) Lack of Particularity; and

5. Insofar as it seeks the information referred to in subparagraph (f), (a) Non-Preliminary and Non-Structural, (b) Lack of Relevance, (c) Burden, (d) Lack of Particularity and (e) Improper Opinion.

Interrogatory No. 3

State the names of the employees of Weis who were your principal contacts and sources of information with respect to the May 26 Audit.

Objection to Interrogatory No. 3

Defendant objects to Interrogatory No. 3 to the extent it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. In light of the definitions of "Touche Ross", "you", "your" and "Weis"set forth in the Interrrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

3. In light of the definition of "May 26 Audit" set forth in the Interrogatories, (a) Lack of Particularity and (b) Improper Assumption;

4. Non-Preliminary and Non-Structural;

5. Insofar as it uses the term "principal", (a) Lack of Particularity, (b) Improper Opinion, and (c) Improper Assumption; and

6. Insofar as it uses the term "sources of information", (a) Lack of Particularity and (b) Improper Assumption.

Interrogatory No. 4

State the nature of each separate professional service performed by you for Weis since January 1, 1972.

Objection to Interrogatory No. 4

Defendant objects to Interrogatory No. 4 to the extent it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definitions of "Touche Ross", "you" and "Weis" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definitions, (a) Lack of Relevance and (b) Burden; and

5. Insofar as it uses the phrase "separate professional service", (a) Lack of Particularity and (b) Improper Opinion.

Interrogatory No. 5

Identify by date, originator and intended recipients each document or oral communication pursuant to which a professional service referred to in Interrogatory No. 4 was performed.

Objection to Interrogatory No. 5

Defendant objects to Interrogatory No. 5 to the extent it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. Lack of Relevance;

4. Burden;

5. Lack of Particularity; and

6. Improper Opinion.

Interrogatory No. 6

Identify by date, originator and intended recipients each document or oral communication in which results or findings from any professional service referred to in Interrogatory No. 4 were reported.

Objection to Interrogatory No. 6

Defendant objects to Interrogatory No. 6 to the extent it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. Lack of Relevance;

4. Burden;

5. Lack of Particularity; and

6. Improper Opinion.

Interrogatory No. 7

State separately for each professional service referred to in Interrogatory No 4:

(a) The amount paid by Weis in consideration of such service;

(b) The date or dates on which such payment was made.

Objection to Interrogatory No. 7

Defendant objects to Interrogatory No. 7 to the extent it requests any information in addition to that supplied in the annexed Answers to Interrogatories, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definition of "Weis" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definition, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity; and

5. Improper Opinion.

Interrogatory No. 8

Identify by date, originator and intended recipients each document (i) between Touche Ross and the New York Stock Exchange, Inc. or (ii) between Touche Ross and the Securities and Exchange Commission which relates or refers in any way to the May 26 Audit.

Objection to Interrogatory No. 8

Defendant objects to Interrogatory No. 8 on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definition of "Touche Ross" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. In light of the definition of "May 26 Audit" set forth in the Interrogatories, (a) Lack of Particularity and (b) Improper Assumption; and

5. Even without reference to such definitions, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity.

Interrogatories Nos. 9, 10 and 11

[9.] State the name of each stock brokerage firm (including Weis) for which you performed professional services since January 1, 1969, and state for each such stock brokerage firm the following:

(a) A description of each such professional service;

(b) The inclusive dates during which each such professional service was performed;

(c) Whether, as a result of any such professional service, Touche Ross has (i) been named as a party to any litigation or (ii) been the subject of any disciplinary or investigatory proceeding by any governmental, quasi-governmental or professional regulatory or supervisory body;

(d) Whether Touche Ross' work in connection with any such professional service has been examined or reviewed by any other auditing or accounting firm.

[10.] If the answer to Interrogatory No. 9(c) is in the affirmative, state the following:

(a) The court, docket number, names of other parties, and present status of any such litigation;

(b) A description of the nature or subject matter of any such disciplinary or investigatory proceeding and its present status.

[11.] If the answer to Interrogatory No. 9(d) is in the affirmative, state the following:

(a) The name of the firm conducting such examination or review;

(b) The date of such examination or review;

(c) A description of the Touche Ross work examined or reviewed;

(d) The name of the entity requesting the examination or review;

(e) The reason for the examination or review being conducted.

Objections to Interrogatories Nos. 9, 10 and 11

Defendant objects to Interrogatories Nos. 9, 10 and 11, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definitions of "Touche Ross" and "you" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definitions, (a) Lack of Relevance, (b) Burden, and (c) Lack of Particularity;

5. Improper Opinion; and

6. Confidential Information.

Interrogatories Nos. 12 and 13

[12.] State whether there existed at the time of the May 26 Audit any guide, manual or instruction prepared primarily by Touche Ross and/or primarily for the use of Touche Ross concerning the suggested or recommended method of conducting an audit of a stock brokerage firm.

[13.] If the answer to Interrogatory No. 12 is in the affirmative, identify each such guide, manual or instruction by its title, its author or authors, its intended recipients or users, the date of its original preparation, and the date of its most recent revision prior to July 21, 1972.

Objections to Interrogatories Nos. 12 and 13

Defendant objects to Interrogatories Nos. 12 and 13, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definition of "Touche Ross" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. In light of the definition of "May 26 Audit" set forth in the Interrogatories, (a) Lack of Particularity and (b) Improper Assumption;

5. Even without reference to such definitions, (a) Lack of Relevance, (b) Burden, and (c) Lack of Particularity;

6. Improper Opinion; and

7. Confidential Information.

Interrogatory No. 14

State whether Touche Ross is authorized to practice by or before the Securities and Exchange Commission and, if so, state what form such authorization takes and as of what date it took effect.

Objection to Interrogatory No. 14

Defendant objects to Interrogatory No. 14, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definition of "Touche Ross" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definition, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

5. Improper Opinion; and

6. Improper Assumption.

Interrogatories Nos. 15 and 16

[15.] State whether an insurance agreement exists under which any entity carrying on an insurance business is or may be liable to Touche Ross:

(a) to satisfy part or all of any judgment which may be entered in this action against Touche Ross; or

(b) to indemnify or reimburse Touche Ross for payments made to satisfy part or all of any such judgment; or

(c) to pay or to reimburse Touche Ross for the costs, charges and expenses, including attorneys' fees, incurred in Touche Ross' defense in this action.

[16.] If the answer to Interrogatory No. 15 is in the affirmative, state with respect to each such insurance agreement the following:

(a) The name and address of the insurer or insurers;

(b) The maximum amount of insurance available under the agreement and a brief description of any provisions of the agreement which limit the payment of maximum coverage.

Objection to Interrogatories Nos. 15 and 16

Defendant objects to Interrogatories Nos. 15 and 16, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definition of "Touche Ross"

set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definition, (a) Lack of Relevance and (b) Burden;

5. Improper Opinion;

6. Confidential Information; and

7. They seek information not within the scope of Rule 26(b)(2), F. R. Civ. P.

Interrogatories Nos. 17 and 18

[17.] State whether or not any payments have been made in behalf of Touche Ross to any person or entity under any insurance agreement for any claim, liability or judgment asserted or entered against Touche Ross arising from the financial condition, or reports of the financial condition, of Weis between January 1, 1972 and the present.

[18.] If the answer to Interrogatory No. 17 is in the affirmative, state the following:

(a) The date of each such payment;

(b) The recipient of each such payment;

(c) The insurance agreement under which such payment was made;

(d) The nature of the claim, liability or judgment for which such payment was made.

Objection to Interrogatories Nos. 17 and 18

Defendant objects to Interrogatories Nos. 17 and 18, on the following grounds:

1. Premature;

2. Non-Preliminary and Non-Structural;

3. In light of the definitions of "Touche Ross" and "Weis" set forth in the Interrogatories, (a) Lack of Relevance, (b) Burden and (c) Lack of Particularity;

4. Even without reference to such definitions, (a) Lack of Relevance, (b) Burden and (c) Lack of Particu-

larity;

5. Confidential Information; and

6. They seek information not within the scope of Rule 26(b)(2), F. R. Civ. P.

August 23, 1976

ROSENMAN COLIN FREUND LEWIS
& COHEN

By _____
A Member of the Firm
Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 644-7000

DEFENDANT'S NOTICE OF MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiffs,	76 Civ. 1981 (I.B.W.)
-against-	NOTICE OF MOTION
TOUCHE ROSS & CO., Defendant.	

- x

PLEASE TAKE NOTICE that, upon the annexed affidavits of Arnold I. Roth (sworn to September 15, 1976), Philip H. Cohen (sworn to September 14, 1976) and Barry N. Cooper (sworn to September 14, 1976), and the complaint and the prior proceedings herein, the undersigned will move this Court, before the Honorable Inzer B. Wyatt, in Room 905, United States Court House, Foley Square, New York, New York on October 1, 1976, at 2:30 P.M., or as soon thereafter as counsel can be heard, for an order

1. Pursuant to Rule 12(b), F.R.Civ.P., dismissing this action, said complaint, and each so-called cause of action therein alleged, on the grounds that this Court lacks subject matter jurisdiction and plaintiffs have failed to state a claim upon which relief can be granted; and,

2. To the extent that the foregoing relief is not granted, staying this action pending determination of the action in the Supreme Court of the State of New York, New York County, entitled Edward S. Redington,

as Trustee for the liquidation of the business of Weis Securities, Inc., and Securities Investor Protection Corporation v. Touche Ross & Co. (Index No. 13996/76); and

3. Granting to defendant such other relief as is just and proper.

September 15, 1976

ROSENMAN COLIN FREUND
LEWIS & COHEN

By _____
A Partner
Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
212-644-7000

TO:

HUGHES HUBBARD & REED
Attorneys for Plaintiff
Edward S. Redington
One Wall Street
New York, New York 10005

HAWKINS, DELAFIELD & WOOD
Attorneys for Plaintiff
Securities Investor
Protection Corporation
67 Wall Street
New York, New York 10005

AFFIDAVIT OF ARNOLD I. ROTH IN SUPPORT OF MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	76 Civ. 1981 (I.B.W.)
Plaintiffs,	:	
-against-	:	AFFIDAVIT
TOUCHE ROSS & CO.,	:	
Defendant.	:	

- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

ARNOLD I. ROTH, being duly sworn, deposes and says:

1. I am a member of the firm of Rosenman Colin Freund Lewis & Cohen, attorneys for defendant Touche Ross & Co. ("Touche Ross") herein. I submit this Affidavit together with the accompanying Affidavits of Philip H. Cohen and Barry N. Cooper, in support of the present motion by defendant Touche Ross for an order (i) pursuant to Rule 12(b), F.R.Civ.P., dismissing the complaint herein, each of the so-called "causes of action" therein alleged, and this action, on the grounds of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, and (ii) to the extent that the foregoing relief is not granted, staying this action pending determination of the action in the Supreme Court of the State of New York, New York County, entitled Edward S. Redington, as Trustee for the liquidation of the business of Weis Securities, Inc., and Securities Investor Protection Corporation v. Touche Ross & Co. (Index No. 13996/76) (the "State Court Action").

2. This is yet another in the series of actions in this Court which arise from the liquidation under the Securities Investor Protection Act of 1970 ("SIPA") of the defunct brokerage firm, Weis Securities, Inc. ("Weis"), and which would impose liability upon defendant Touche Ross, a firm of certified public accountants, by reason of its work on certain financial statements of Weis for periods ending approximately a year before the Weis collapse. This action is brought by plaintiffs Edward S. Redington ("Redington"), the Trustee for the liquidation of Weis, and Securities Investor Protection Corporation ("SIPC"), and seeks from defendant Touche Ross aggregate alleged damages of over $65,000,000.

3. Although plaintiffs seek to create the appearance of federally-created claims primarily by the now familiar tactic of alleging that the conduct of defendant Touche Ross of which they complain violated the Securities Exchange Act of 1934 (the "1934 Act"), they are here asserting what are essentially state-created, common law claims of negligence, malpractice, breach of contract and breach of warranty. Indeed, so clear is the basic common law nature of plaintiff's claims, even to plaintiffs themselves, that they did not even commence this action until almost a year after they had commenced a separate action (the "State Court Action") in the New York State courts seeking, on the basis of identical factual allegations and almost identical claims as are now asserted in the complaint in this action, the same relief against defendant Touche Ross as they now seek here.

4. The accompanying memorandum sets forth in detail the reasons which compel the granting of the present motion and the dismissal of the complaint and each of the "causes of action" therein alleged. This affidavit (and the accompanying Cohen and Cooper Affidavits) sets forth facts concerning this action and the State Court Action, and pertinent to an understanding of the many reasons why this action must be dismissed, and why plaintiffs are and should be limited to proceeding with their claims, if in fact they have any viable claims, in the State Court Action.

5. This action was commenced on April 30, 1976, by the filing of the complaint herein. A copy of the complaint is annexed hereto as Exhibit 1.

6. Almost ten months prior to the commencement of this action, by service of a summons on July 3, 1975, plaintiffs herein commenced the State Court Action in the Supreme Court of the State of New York, County of New York, under the title (which is the same as the title of this action) Edward S. Redington, as Trustee for the liquidation of the business of Weis Securities, Inc., and Securities Investor Protection Corporation v. Touche Ross & Co. (Index No. 13996/76). Copies of the summons, and the subsequently served complaint, in the State Court Action are annexed hereto as, respectively, Exhibits 2 and 3.

The parties to the State Court Action are the same as the parties to this action and the complaint in the State Court Action asserts identical factual allegations and almost

identical claims, and seeks identical relief, as does the complaint in this action.

7. Defendant Touche Ross has commenced discovery in the State Court Action, having served extensive interrogatories therein on both plaintiff Redington and plaintiff SIPC and notices to take the deposition of each. Objections and answers to the interrogatories were originally due on, respectively, September ~~10~~ 13 and September ~~17~~ 20, and the depositions were originally set to commence on September 27 for plaintiff SIPC and on September 30 for plaintiff Redington. At plaintiffs' request, each of those dates has been adjourned for approximately one month.

8. The extensive litigation in this Court arising out of the collapse of Weis involves matters and facts pertinent to this action, among which are those set forth below.

9. The complaint herein refers (¶ 14) to the "SEC... action in this Court (73 Civ. 2332) against Weis and the Weis Five for injunctive relief" an action which led to plaintiff Redington's appointment as Trustee. The complaint of the Securities and Exchange Commission (the "SEC") in that action, a copy of which is annexed hereto as Exhibit 4, alleged violations of the securities acts in connection with Weis' allegedly false financial statements <u>only against Weis itself and certain of its officers</u>. Even after the "separate investigations by the Exchange and the SEC" referred to in the complaint herein (¶ 13), the SEC complaint <u>did not allege that defendant Touche Ross had committed or participated in or aided and abetted any such violations</u>. A necessary

conclusion is that the "investigations" by the SEC and the Exchange revealed that defendant Touche Ross had not committed or been involved in any violations.

10. Moreover, in the indictment filed in this Court against several former Weis officers in United States v. Arthur Levine et al. (73 Crim. 693), a copy of which is annexed hereto as Exhibit 5, Count I significantly alleged that those officers

> "did fraudulently conceal from Weis' auditors, Touche Ross & Co., the existence and nature of the aforesaid fraudulent books and records and, in addition, . . . did create directly and indirectly wholly fictitious documentation for the aforesaid fraudulent entries" (emphasis added) (Exn. 5, p. 5),

and three of those officers, including the former Chairman of the Board and Chief Executive Officer, the President and the Comptroller, have admitted the truth of such allegations by pleading guilty to Count I of the indictment (see copy of criminal docket sheet annexed hereto as Exhibit 6).

11. There are presently in this Court a number of actions against defendant Touche Ross which arise out of the Weis situation. Various decisions have been rendered in those actions, and are referred to in the accompanying memorandum as pertinent.

12. In one of those actions, which was brought as a purported class action on behalf of the customers of Weis during the relevant period, Judge Brieant recognized that the claims against defendant Touche Ross by reason of its

involvement with Weis -- claims which were the same as those of plaintiffs Redington and SIPC here (indeed, claims which plaintiff SIPC purports to assert here as an alleged subrogee) -- were not claims under the 1934 Act, but were at most non-federal, common law claims for negligence and malpractice which should be determined by the State courts. Rich v. Touche Ross & Co., CCH Fed. Sec. L. Rep. ¶95,514 (S.D.N.Y. 1976). Judge Brieant held that the Rich plaintiffs did not state a claim for relief under the 1934 Act, and dismissed their second amended complaint, a copy of which is annexed hereto as Exhibit 7. Thereafter, the plaintiffs in Rich v. Touche Ross & Co., as have other customers, commenced a State court action which is brought as a purported class action, and which is now pending in the Supreme Court of the State of New York, County of New York.

13. Another related group of such actions are the three actions in this court entitled, respectively, Sheldon Berger et al. v. Weis Securities, Inc., et al. (74 Civ. 186 (I.B.W.)), George P. Govatos, Sr. v. Weis Securities, Inc., et al. (74 Civ. 2832 (I.B.W.)) and Irwin S. Barshack v. Weis Securities, Inc., et al. (74 Civ. 2833 (I.B.W.)). Copies of the second amended complaint in the Berger action, and the amended complaint in the Govatos and Barshack action, are annexed hereto as, respectively, Exhibits 8 and 9.

On June 27, 1975, Judge Wyatt rendered an unreported decision on a motion by defendant Touche Ross to dismiss the second amended complaint and amended complaint. In that decision, a copy of which is annexed hereto as

Exhibit 10, Judge Wyatt granted the motion with respect to claims made under Section 17(a) of the 1934 Act (claims which were similar to those asserted in this action by plaintiffs Redington and SIPC).

14. This action involves claims based upon Section 17 of the 1934 Act and Rule 17a-5 thereunder. Because Section 17 and Rule 17a-5 have been substantially amended since the time in 1972 pertinent to this action, copies of Section 17 and Rule 17a-5 in effect at that time are annexed hereto as, respectively, Exhibits 11 and 12, for the convenience of the Court.

15. For the reasons set forth in the accompanying memorandum it is respectfully submitted that the present motion of defendant Touche Ross be granted.

Arnold I. Roth

Arnold I. Roth

Sworn to before me,
this 15th day of September,
1976.

Notary Public

JOHN A. COAR
Notary Public State of New York
No. 31-0669960
Qualified in New York County
Commission Expires March 30, 1977

Exhibit 1 annexed to the Affidavit of Arnold I. Roth is the Complaint in this action along with the Exhibits thereto. The Complaint and the Exhibits thereto appear herein at pages 5a to 73a, supra.

EXHIBIT 2 TO AFFIDAVIT OF ARNOLD I. ROTH.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

EDWARD S. REDINGTON, As Trustee for the Liquidation of the Business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

- x

Index No.

Plaintiffs designate New York County as the place of trial.

SUMMONS WITH NOTICE

Plaintiff Edward S. Redington, Trustee, resides at One Wall Street, New York, New York 10005

Plaintiff Securities Investor Protection Corporation ("SIPC") resides at 900 Seventeenth Street, N.W., Washington, D.C. 20006

To the above named Defendant:

YOU ARE HEREBY SUMMONED to appear in this action by serving a notice of appearance on the pla tiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service.

Take notice that the object of this action is to recover damages for negligence, malpractice, fraud, breach of contract and breach of warranty in connection with auditing and accounting services rendered by defendant to Weis Securities, Inc., and in case of your failure to appear, judgment will be taken against you by default for the sum of $55,000,000.00 on behalf of plaintiff Edward S. Redington, Trustee, and for the sum of $14,500,000.00 on behalf of plaintiff SIPC, plus interest from July 7, 1972 and the costs and disbursements of this action.

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92310-042

The basis of the venue designated is the residence of the defendant, which is 1633 Broadway, New York, New York 10019.

Dated: July 2, 1975

/s/

HUGHES HUBBARD & REED
Attorneys for Trustee
One Wall Street
New York, New York 10005
(212) 943-6500

/s/

WILFRED R. CARON, ESQ.
Attorney for SIPC
c/o Goldman & Drazen
One State Street Plaza
New York, New York 10004
(212) 422-0488

EXHIBIT 3 TO AFFIDAVIT OF ARNOLD I. ROTH.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	COMPLAINT
Plaintiffs,	:	Index No.
-against-	:	
TOUCHE ROSS & CO.,	:	
Defendant.	:	

- x

Plaintiffs, EDWARD S. REDINGTON, Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, by their respective attorneys, complaining of the Defendant, allege upon information and belief, except as to paragraphs 1, 2, 4, 9, 10 and 17 hereof, as follows:

PARTIES

1. Plaintiff Edward S. Redington (the "Trustee") was duly appointed by Order of the United States District Court for the Southern District of New York dated May 30, 1973 as Trustee for the liquidation of the business of Weis Securities, Inc. ("Weis") pursuant to the Securities Investor Protection Act of 1970 (15 U.S.C. Section 78aaa, et seq.) (hereinafter the "1970 Act"), has duly qualified, and is presently acting in such capacity.

2. Plaintiff Securities Investor Protection Corporation ("SIPC") is a non-profit membership corporation created by and organized under the 1970 Act whose members are, with certain statutory exceptions, all persons registered as broker-dealers under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a, et seq.) (hereinafter the "1934 Act") and, with certain statutory exceptions, all persons who are members of a national securities exchange. The duties and functions of SIPC are set forth in the 1970 Act and include, inter alia, the initiation of liquidation proceedings against members of SIPC that have failed or are in danger of failing to meet their obligations to customers, the establishment of a fund from which to satisfy, within certain limits, the claims of customers of SIPC members that are being liquidated pursuant to the 1970 Act, and --in consultation with and with the cooperation of the Securities and Exchange Commission ("SEC"), the New York Stock Exchange, Inc. (the "Exchange") and other self-regulatory organizations--the establishment of procedures designed to detect approaching financial difficulty of SIPC members and to ensure that such members are in compliance with applicable financial responsibility rules. SIPC relies entirely and solely on the SEC, the Exchange and other self-regulatory organizations to monitor the financial condition of SIPC members, to investigate any SIPC member in financial difficulty, and to notify SIPC thereof. At all relevant times Weis was a member of SIPC.

3. Defendant Touche Ross & Co. ("Touche Ross") is a partnership of certified public accountants with its principal place of business at 1633 Broadway in the City, County and State of New York. In or about 1969, Touche Ross was engaged by Weis as its independent certified public accounting firm, and Touche Ross continued to act in such capacity from about 1969 until about May 1973, when the forced liquidation of Weis commenced.

COMMON ALLEGATIONS

4. At all relevant times prior to May 30, 1973, Weis was a corporation registered as a broker-dealer with the SEC and was engaged in the business of a broker-dealer of securities. From June 1965 until May 1973, Weis was a member of the Exchange, the self-regulatory organization designated by SIPC to examine Weis for compliance with the applicable financial responsibility rules imposed on broker-dealers pursuant to Section 6 of the 1934 Act (15 U.S.C. Section 78f) for the protection of the public as a minimum prerequisite for conducting a business as a broker-dealer in securities.

5. For each of its four fiscal years 1968 through 1971 (ended May 31), Weis' audited financial statements reflected a profit. During early 1972 five of Weis' officers (the "Weis Five") became increasingly concerned that a fair and accurate presentation of Weis' results of operations for fiscal year 1972 would reflect that Weis was operating at a loss. The Weis

Five misstated the financial condition and results of operations of Weis in financial reports prepared at fiscal year-end 1972. These reports were required to be filed with regulatory authorities pursuant to Section 17 of the 1934 Act (15 U.S.C. Section 78q) and were directly or indirectly submitted to Weis, its Board of Directors, the SEC, SIPC, the Exchange, and Weis' customers, creditors, lenders and shareholders. Such misstatements were accomplished by, inter alia, materially overstating assets, creating non-existent assets, understating liabilities, overstating income, and understating expenses. The purpose and effect of such material misstatements were, inter alia, to create a false impression that Weis' earnings for the fiscal year ended May 26, 1972 were $1 700,000 before taxes whereas in truth and in fact Weis had actually suffered losses in that period in excess of $1,500,000.

6. Had Weis' actual financial condition, its actual results of operations, and the misstatement in its books and records been truthfully reported at the end of Weis' 1972 fiscal year, Weis' 1973 forced liquidation under the 1970 Act would not have become necessary, and most if not all of Weis' assets and its good will as a going concern could have been preserved by a number of means including, inter alia, change in Weis' management, reversal of its policy of growth and expansion, curtailment or contraction of certain of its operations and business practices, gradual liquidation of some or all of its operations, or merger with another securities firm. Moreover, if a liquidation of Weis had been necessary as the result of such truthful

reporting, such liquidation could have occurred at the end of Weis' 1972 fiscal year, when its assets were greater and the aggregate of its liabilities was lower than a year later.

7. The incorrect and incomplete fiscal 1972 year-end reports prepared by and under the direction of the Weis Five were certified by Touche Ross as being correct and complete. Consequently, the doctoring of Weis' books, records and required reports, the deterioration of its financial condition and the violations of financial responsibility rules could no be nipped in the bud at a time when a forced liquidation of Weis could still have been avoided. Instead, during Weis' fiscal year 1973, Weis' financial condition deteriorated as the Weis policy of expansion continued unabated. Weis incurred substantial operating losses, depletion of its assets, and depletion of the property held by Weis in trust for its customers. The Weis Five continued to make false and fictitious entries in Weis' books and records and continued, directly or indirectly, to submit false reports to Weis, its Board of Directors, the SEC, SIPC, the Exchange, and Weis' customers, creditors, lenders and shareholders in order to conceal Weis' true financial condition.

8. Not until April and May of 1973, as a result of separate investigations by the Exchange and the SEC, did the misstatement of Weis' financial condition come to light. These investigations gradually revealed the violations of financial responsibility rules, Weis' unsafe, unsatisfactory and deteriorating financial condition, and the lack of accuracy and

reliability of any of its financial statements, including those certified by Touche Ross. These revelations and the resulting uncertainties with respect to Weis' true financial condition prevented Weis from being saved as a going concern or being merged with another, financially more secure, brokerage firm, and resulted in Weis' forced liquidation under the 1970 Act.

9. On May 24, 1973, in the United States District Court for the Southern District of New York, the SEC commenced an action against Weis and the Weis Five for injunctive relief to prevent them from conducting a brokerage business in violation of the 1934 Act and the rules and regulations promulgated thereunder. Also on May 24, 1973 (the "Filing Date"), pursuant to Section 5(a)(2) of the 1970 Act (15 U.S.C. Section 78eee(a)(2)), SIPC applied in the same Court for a decree adjudicating that the customers of Weis were in need of the protection of the 1970 Act. On May 30, 1973 (the "Date of Adjudication") such a decree was granted, the liquidation of Weis was ordered, and Plaintiff Edward S. Redington was appointed Trustee for the liquidation of the business of Weis.

10. Upon the entry of the decree referred to in the preceding paragraph, SIPC was required by the 1970 Act to provide, and did provide to the Trustee, funds for the payment of claims submitted by certain customers and creditors of Weis and for certain administrative expenses of the liquidation.

11. At all relevant times, Defendant Touche Ross held itself out to Weis, the SEC, SIPC, the Exchange and the general

public as possessing the ordinary skill, ability and expertise of certified public accountants in accounting and auditing matters, and as being qualified, inter alia, (i) to examine and audit the books, records and accounts of firms engaged in the securities business in accordance with generally accepted auditing standards and (ii) to express opinions with respect to the financial statements of such firms as fairly reflecting their financial condition and results of operations in accordance with generally accepted accounting principles. Touche Ross further held itself out as being familiar with accounting and auditing practices and standards required by the SEC and the Exchange for firms engaged in the securities business.

12. From approximately 1969 until the Date of Adjudication, Touche Ross was engaged by Weis for valuable consideration to serve as Weis' independent certified public accounting firm. During this period Touche Ross agreed to conduct annual audits of the affairs of Weis and to issue opinions and prepare reports on its financial statements, all in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the SEC and the Exchange. In accepting said engagement, Touche Ross agreed to perform said services in a thorough, proper, skillful and diligent manner.

13. Weis and its Board of Directors, customers, creditors, lenders and shareholders, and the SEC, the Exchange and SIPC relied on Touche Ross to apply the standards and expertise, to express the opinions, to make the certifications

and to prepare or assist in the preparation of the reports discussed in paragraphs 11 and 12, supra, for the purposes, among others, of (i) protecting Weis from fraudulent activity of its officers, directors, agents, and employees; (ii) safeguarding the existence and use of Weis' assets; (iii) assuring the accuracy of financial data submitted directly or indirectly to the Exchange, the SEC and SIPC, and generally made available to the public; (iv) determining whether Weis could continue to engage in business as a broker-dealer in securities; (v) determining whether or not significant restrictions and alterations in the scope and nature of its operations would be required in order for Weis to continue to engage in business as a broker-dealer; and (vi) making informed business decisions concerning the future operations of Weis on the basis of accurate financial information.

14. In or about late 1971 or early 1972, Touche Ross agreed with Weis to perform the aforementioned auditing and accounting services for the year 1972. Among other things, Touche Ross agreed (a) to prepare, cause to be prepared, and assist in the preparation of financial statements of Weis and to issue opinion letters with respect to said statements; (b) to audit the affairs of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations promulgated by the Exchange and the SEC pursuant to Sections 6 and 17 of the 1934 Act (15 U.S.C. Sections 78f and 78q); (c) to notify the Exchange promptly that such audit had been commenced; (d) to prepare an answer to the financial questionnaire

(the "Answers to the Financial Questionnaire") of the Exchange based upon said audit; (e) to submit to the Exchange (i) a copy of the Answers to the Financial Questionnaire, (ii) an attestation that the requirements of the audit regulations had been observed in the conduct of the audit, and (iii) a statement that Touche Ross had made a review of Weis' accounting system, internal accounting control and procedures for safeguarding securities; (f) to furnish to the Exchange comments relative to any material inadequacies found to exist in Weis' accounting system, internal accounting control, and procedures for safeguarding securities; and (g) to indicate any corrective action taken or proposed.

15. Weis' employment of Touche Ross as its independent certified public accounting firm was not merely a matter of private contract between Weis and Touche Ross, but was required by the Exchange pursuant to its duty under Section 6 of the 1934 Act (15 U.S.C. Section 78f) to regulate its members' conduct of their businesses and supervise their financial condition for the benefit of the public. Touche Ross knew or should have known that Weis' engagement of an independent certified public accounting firm was a requirement of the Exchange and that it was for the benefit both of Weis in making decisions with respect to the operation of its business and of persons other than Weis.

16. In accordance with its engagement agreement, Touche Ross purported to conduct an audit of Weis' books and

records for the fiscal year ended May 26, 1972 and in connection therewith (a) certified, prepared, caused to be prepared, and assisted in the preparation of financial statements of Weis; (b) prepared and certified Weis' Answers to the Financial Questionnaire; and (c) issued four opinion letters (the "1972 Opinion Letters") to the Board of Directors of Weis dated, respectively, July 7, 1972, July 7, 1972, July 21, 1972 and July 21, 1972.

17. By means of the foregoing, Touche Ross represented and certified that it had examined (i) the statement of Weis' financial condition as of May 26, 1972, (ii) Weis' Answers to the Financial Questionnaire as of May 26, 1972, (iii) Weis' consolidated balance sheet for the 52 weeks ended May 26, 1972, and (iv) Weis' consolidated statement of earnings for the five years ended May 26, 1972. The letter pertaining to the Answers to the Financial Questionnaire stated that the Touche Ross examination had been made "in accordance with generally accepted auditing standards, and accordingly included a review of the accounting system, internal accounting control and the procedures for safeguarding securities including such tests thereof . . . as [Touche Ross] considered necessary in the circumstances, including the audit procedures prescribed by the New York Stock Exchange and the Securities and Exchange Commission." The letter also stated that the Answers to the Financial

Questionnaire presented fairly the financial position of Weis at May 26, 1972 in the form prescribed by the Exchange and the SEC in conformity with generally accepted accounting principles applied on a consistent basis. Each of the other three 1972 Opinion Letters stated that the Touche Ross examination had been conducted in accordance with generally accepted auditing standards and that the aforementioned financial statements presented fairly the financial position of Weis and subsidiaries at May 26, 1972, and the results of operations and changes in their financial position for the year and the five years then ended in conformity with generally accepted accounting principles applied on a consistent basis. (The 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements are annexed hereto as Exhibits A, B, C and D.)

18. Touche Ross knew, should have known and intended that Weis and its Board of Directors would rely on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements for various purposes, including those set forth in paragraph 13, supra.

19. Touche Ross knew, should have known and intended that the SEC, the Exchange and SIPC would rely on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements in carrying

out their respective regulatory, supervisory and protective duties with respect to Weis, in determining whether Weis was in compliance with the applicable financial responsibility rules, and in determining whether Weis was in financial difficulty.

20. Touche Ross knew, should have known and intended that Weis' customers, creditors, lenders and shareholders would rely directly or indirectly on the 1972 Opinion Letters and accompanying Answers to the Financial Questionnaire and financial statements in making decisions whether to commence or continue their respective relationships with Weis.

21. Touche Ross breached and failed to perform its agreement and obligation to render auditing and accounting services with respect to Weis in a thorough, proper, skillful and diligent manner and performed said services in a negligent, reckless, careless, unskilled and grossly negligent manner in that, among other things, it:

a. failed to audit, verify and examine the books, records, accounts and financial statements of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC;

b. failed to prepare, cause to be prepared, and assist in the preparation of accurate financial statements of

Weis and Weis' Answers to the Financial Questionnaire;

c. rendered the 1972 Opinion Letters, which were false, inaccurate and incomplete;

d. failed properly to test, study and evaluate Weis' system of internal accounting control;

e. failed to obtain competent evidential matter sufficient to afford a proper basis for the 1972 Opinion Letters;

f. falsely certified that it had examined Weis' books and records in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC; and

g. failed to inform or otherwise alert Weis, its Board of Directors, the SEC and the Exchange (and, through the Exchange, SIPC) (i) of the material errors in Weis' Answers to the Financial Questionnaire and in Weis' financial statements prepared in connection with the 1972 Touche Ross audit; (ii) of the existence of inaccurate and unreliable books and records with respect to Weis; or (iii) of the possibility that Weis was facing financial difficulty.

22. Specifically, among other things, Touche Ross failed properly to audit, verify and examine:

(a) the Scheinman Hochstin & Trotta liquidation omnibus account (the "SH&T Omnibus Account"), a claimed asset of $745,000. If Touche Ross had audited, verified and examined the SH&T Omnibus Account in accordance with generally accepted

auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC, it would have discovered the following:

(1) that in or about April 1972 the SH&T Omnibus Account had been debited in the amount of approximately $625,000;

(2) that, contrary to generally accepted accounting principles, the offsetting credits for this debit were to one or more income accounts;

(3) that the purpose and effect of these improper credits were to overstate Weis' gross income by approximately $625,000 and its net income and net worth by approximately $312,500; and

(4) that an overstatement by this amount was a material overstatement because it constituted over 30% of Weis' claimed net income for the entire fiscal year ended May 26, 1972 and over 4% of Weis' claimed net worth as of that date.

(b) the Winslow, Cohu & Stetson ("WC&S") insurance claim receivable, a claimed asset of $1,285,000. If Touche Ross had audited, verified and examined the WC&S insurance claim receivable in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC, it would have discovered the following:

(1) that, on or about May 8, 1972, the WC&S insurance claim receivable had improperly been increased in value (debited) to $785,000 because of interest purportedly payable on the claim;

(2) that, on or about May 25, 1972, the WC&S insurance claim receivable had improperly been further increased in value (debited) to $1,285,000 because of a purported increase in the value of the claim;

(3) that, contrary to generally accepted accounting principles, the offsetting credits for these two debits had been made to various income accounts;

(4) that the purpose and effect of these improper transactions were to overstate Weis' gross income by approximately $685,000 and its net income and net worth by approximately $342,500;

(5) that an overstatement by this amount was a material overstatement because it constituted nearly 35% of Weis' claimed net income for the entire fiscal year ended May 26, 1972 and approximately 4.5% of Weis' claimed net worth as of that date.

(c) other false, fraudulent and improper entries, irregularities and accounting transactions in the books of Weis which included, inter alia, the following:

(1) The re-depositing into income accounts of at least $800,000 worth of checks which were purportedly drawn to pay vendors or other creditors, thus overstating Weis' net income and net worth by at least $400,000;

(2) The doubling (to approximately $432,000) of accrued commission income for May 22-26, 1972, thus overstating Weis' net income, net worth, and net capital by approximately $108,000;

(3) The improper crediting of income accounts with proceeds from a sale-leaseback transaction, thus overstating Weis' net income and net worth;

(4) The improper transfer of certain short security positions to dividend receivable accounts;

(5) The improper failure to record certain liabilities of Weis on the books of Weis;

(6) The manipulation of certain error accounts to reflect false credit balances of $100,000 to $200,000, which then were taken into income, thus overstating Weis' net income, net worth and net capital by approximately $50,000 to $100,000;

(7) The improper designation of up to $500,000 worth of miscellaneous receivables as "current" so that it was not necessary to deduct them from capital in computing Weis' net capital ratio under Exchange Rule 325, with the result that Weis' net capital ratio was made to appear to be below 10:1 and Weis thus was not precluded by Exchange Rule 326 from expanding its business.

23. Upon the discovery by Touche Ross of any one or more of the false entries or improper accounting transactions discussed in paragraph 22 above, Touche Ross would have had an obligation to report such discoveries, inter alia, to Weis, its Board of Directors, the SEC and the Exchange (and, through the Exchange, SIPC); and it would have had an obligation to report such discoveries in the 1972 Opinion Letters and to refrain from issuing the 1972 Opinion Letters in the form they actually took.

24. As a direct and proximate result of Touche Ross' failure to conduct the 1972 audit of Weis in accordance with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC:

a. the acts of the Weis Five as set forth in paragraphs 5 through 8 herein were not promptly discovered, and the Weis Five were able to continue to make false and fictitious entries in Weis' books, records and financial statements;

b. other misstatements and inaccuracies in Weis' books, records and financial statements were not discovered;

c. Weis, its Board of Directors, the Exchange, the SEC, SIPC, and Weis' customers, creditors, lenders and shareholders were misled by Touche Ross into believing or assuming that as of May 26, 1972 Weis was in sound financial condition and in compliance with applicable financial responsibility rules;

d. Weis, its Board of Directors, the Exchange, the SEC and SIPC were prevented from (i) knowing the true financial condition of Weis, (ii) performing their respective duties to safeguard the assets of Weis and the property Weis was holding in trust for its customers, (iii) taking and causing to be taken appropriate and immediate remedial action at a time when a forced liquidation of Weis under the 1970 Act could have been prevented, and (iv) taking or causing to be taken appropriate and immediate action to avoid or reduce the costs of satisfying the claims of Weis' customers;

e. the acts of the Weis Five as set forth in paragraphs 5 through 8 herein were not discovered by Weis, its Board of Directors, the SEC, SIPC or the Exchange until April and May 1973 at which time the only remedial action that could be taken was the forced liquidation of Weis under the 1970 Act, which caused and continues to cause substantial injury to Weis and SIPC as well as Weis' customers, creditors, lenders and shareholders;

f. the assets of Weis and the property Weis was holding in trust for its customers were not on the Filing Date or thereafter sufficient to satisfy the claims of Weis' customers, creditors, lenders and shareholders;

g. Weis was unable to comply with the minimum financial responsibility rules which would allow it to conduct its business as a broker-dealer in securities, was unable to restore itself to a condition in which it could remain in business, and lost the value of its business and assets as a going concern;

h. the assets of Weis were wasted and mismanaged; and

i. Weis was caused to undertake financial obligations which it could not satisfy and which it would not or could not have undertaken had its true financial condition as of May 26, 1972 been known to Weis and its Board of Directors, the SEC, the Exchange and SIPC.

AS AND FOR PLAINTIFF TRUSTEE'S
FIRST CAUSE OF ACTION

25. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

26. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 21 through 23 herein, and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
SECOND CAUSE OF ACTION

27. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

28. Touche Ross violated and aided and abetted the Weis Five's violation of a statute (Section 17 of the 1934 Act (15 U.S.C. Section 78q)), the purpose of which was to protect a class of persons that included Weis, its customers, creditors, lenders and shareholders from the types of injuries that they respectively and collectively have suffered on account of the forced liquidation of Weis.

29. As a result of Touche Ross' negligence per se, and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
THIRD CAUSE OF ACTION

30. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

31. The auditing and accounting services performed by Touche Ross with respect to Weis were performed in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements were false, inaccurate and incomplete.

32. By reason of the foregoing reckless and grossly negligent conduct of Touche Ross, and not as the result of any negligence of the Trustee or Weis, Weis has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
FOURTH CAUSE OF ACTION

33. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

34. In connection with the auditing and accounting services performed by Touche Ross and as compensation therefor Weis paid Touche Ross a certain sum of money (the "Touche Ross Fee"), the amount of which is not presently known to Plaintiff Trustee.

35. By reason of Touche Ross' breach of and failure to perform its agreement to render said auditing and accounting services in a thorough, proper, skillful and diligent manner, as set forth in paragraphs 21 through 23 herein, Weis is entitled to general damages in the amount of the Touche Ross Fee and to consequential damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF TRUSTEE'S
FIFTH CAUSE OF ACTION

36. Plaintiff Trustee repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

37. In its engagement letter with Weis and other communications to Weis, Touche Ross expressly and impliedly warranted to Weis that its services to Weis would be of a certain quality (i.e. that, inter alia, they would comply with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC).

38. By reason of the breaches and failures of Touche Ross, including those set forth in paragraphs 21 through 23 herein, those services were not of the warranted quality and were wholly without value to Weis.

39. By reason of Touche Ross' breach of warranty of the quality of its services to Weis, Weis is entitled to general damages in the amount of the difference between

the actual and warranted values of the services rendered, and to consequential damages in an amount which is presently estimated to be at least $51,000,000.

AS AND FOR PLAINTIFF SIPC'S
FIRST CAUSE OF ACTION

40. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

41. As a consequence of the liquidation of Weis, SIPC was required to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

42. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 21 through 23 herein, and not as a result of any negligence of SIPC, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
SECOND CAUSE OF ACTION

43. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

44. As a consequence of the liquidation of Weis, SIPC was required to satisfy the claims of over 34,000 customers and certain other creditors of Weis and to pay for certain administrative expenses of the liquidation.

45. As a result of the malpractice of Touche Ross and its breach of the duties it owed to SIPC (and not as a result of any negligence of SIPC), in that the auditing and accounting services performed by Touche Ross were conducted in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements were false, inaccurate and incomplete, SIPC has suffered and will continue to suffer damages in an amount which is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
THIRD CAUSE OF ACTION

46. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

47. As a result of the negligence and malpractice of Touche Ross, including that set forth in paragraphs 21 through 23 herein, and not as a result of any negligence of any customer or creditor of Weis, the customers and certain other creditors of Weis were misled into believing or assuming that Weis was not in financial difficulty, and consequently over 34,000 of said customers and creditors ultimately filed claims in the Weis liquidation proceeding.

48. The SIPC fund has been or may be depleted in order to satisfy the claims of the over 34,000 customers and creditors of Weis, hereinabove mentioned in paragraph 47, and to pay for certain administrative expenses of the liquidation.

49. But for Touche Ross' negligence and malpractice, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is subrogated to those claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services it performed with respect to Weis.

50. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

AS AND FOR PLAINTIFF SIPC'S
FOURTH CAUSE OF ACTION

51. Plaintiff SIPC repeats and realleges each and every allegation contained in paragraphs 1 through 24 herein as though here set forth in full.

52. As a result of the malpractice of Touche Ross and its breach of the duties it owed to the customers and certain other creditors of Weis (and not as a result of any negligence of any customer or creditor of Weis), in that the auditing and accounting services performed by Touche Ross were conducted in so reckless and grossly negligent a manner that Touche Ross knew or should have known that the 1972 Opinion Letters and the accompanying Answers to the Financial Questionnaire and financial statements

were false, inaccurate and incomplete, the customers and certain other creditors of Weis were misled into believing or assuming that Weis was not in financial difficulty, and consequently over 34,000 of said customers and creditors utimately filed claims in the Weis liquidation proceeding.

53. The SIPC fund has been or may be depleted in order to satisfy the claims of the over 34,000 customers and creditors of Weis, hereinabove mentioned in paragraph 52, and to pay for certain administrative expenses of the liquidation.

54. But for Touche Ross' malpractice, recklessness and gross negligence, the SIPC fund would not have been depleted to the extent that it has been, if at all, and consequently SIPC is subrogated to any and all claims which such customers and certain other creditors of Weis who have been paid out of the SIPC fund could have asserted against Touche Ross based on the auditing and accounting services it performed with respect to Weis.

55. The aggregate of the claims of Weis' customers and certain other creditors which have been satisfied out of the SIPC fund and for which Touche Ross is liable to SIPC is presently estimated to be at least $14,000,000.

WHEREFORE, plaintiffs demand judgment:

a. for $51,000,000 on Plaintiff Trustee's First Cause of Action;

b. for $51,000,000 on Plaintiff Trustee's Second Cause of Action;

c. for $51,000,000 on Plaintiff Trustee's Third Cause of Action;

d. for the amount of the Touche Ross Fee plus $51,000,000 on Plaintiff Trustee's Fourth Cause of Action;

e. for an amount which is the difference between the actual and warranted values of Touche Ross' services with respect to Weis, plus $51,000,000, on Plaintiff Trustee's Fifth Cause of Action;

f. for $14,000,000 on Plaintiff SIPC's First Cause of Action;

g. for $14,000,000 on Plaintiff SIPC's Second Cause of Action;

h. for $14,000,000 on Plaintiff SIPC's Third Cause of Action;

i. for $14,000,000 on Plaintiff SIPC's Fourth Cause of Action;

j. for interest on the amounts demanded herein;

k. for the costs and disbursements of this action; and

l. for such other, further and different relief as to the Court may seem just and proper.

Dated: New York, New York
May 3, 1976

HUGHES HUBBARD & REED
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The Exhibits to the State Court Complaint (Exhibit 3 to the Affidavit of Arnold I. Roth) are the same as the Exhibits to the Complaint in this action and appear herein at pages 5a to 73a, supra.

EXHIBIT 4 TO AFFIDAVIT OF ARNOLD I. ROTH.

FILED
U.S. DISTRICT COURT
MAY 24 12 42 PM '73
S.D. OF N.Y.
USA.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION	:	73 Civil
Plaintiff,	:	73 CIV. 2332
-against-	:	COMPLAINT
WEIS SECURITIES, INC. ARTHUR LEVINE SOL LEIT ALAN SOLOMON JOEL KUBIE ROBERT LYNN	:	JUDGE WYATT
Defendants.	:	

FILED
MAY 24 1973
ROY BABITT
CLERK

1. Plaintiff Securities and Exchange Commission ("Commission") brings this action to enjoin acts and practices in which the defendants Weis Securities, Inc. ("Weis"), Arthur Levine ("Levine"), Sol Leit ("Leit"), Alan Solomon ("Solomon"), Joel Kubie ("Kubie") and Robert Lynn ("Lynn") are engaged and are about to engage which acts and practices constitute and will constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") 15 U.S.C. 77q(a), Section 10(b), 15(c)(3) and 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78j(b), 78o(c)(3) and 78q(a); and Rules 17 C.F.R. 240.10b-5, 15c3-3, 17a-3, 17a-4, 17a-5 and 17a-11 thereunder.

2. The Commission brings this action pursuant to authority conferred by Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e) and Section 20(b) of the Securities Act, 15 U.S.C. 77t(b).

3. This Court has jurisdiction of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. 78aa and Section 22(a) of the Securities Act, 15 U.S.C. 77v(a).

4. The Commission, pursuant to the authority contained in Sections 10(b), 15(c)(3), 17(a) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b), 78o(c)(3). 78q(a) and 78w(a) has prescribed Rules 17 C.F.R. 240.10b-5, 15c3-3, 17a-3, 17a-4, 17a-5 and 17a-11 which are now and at all times herein relevant were in effect.

5. The defendant Weis formerly known as Weis, Voisin & Co., Inc., is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. It is a member of the New York Stock Exchange, Inc., the American Stock Exchange and other national stock exchanges as well as a member of the National Association of Securities Dealers, Inc. Weis has approximately 43,000 customer accounts, 400 registered representatives, 27 branch offices and maintains its principal place of business at 17 Battery Place North, New York, New York.

6. The defendant Levine is the Chairman of the Board of Directors and a substantial shareholder of defendant Weis. He resides at 985 Fifth Avenue, New York, New York.

7. The defendant Leit is president, a director and substantial shareholder of defendant Weis. He resides at 25 Sutton Place, New York, New York.

8. The defendant Solomon is treasurer, director and shareholder of defendant Weis. He resides at 350 Evandale Road, Scarsdale, New York,

9. The defendant Kubie was, until April 8, 1973, the comptroller, executive vice-president, director and a shareholder of defendant Weis. He resides at 1321 Sunnyfield Drive, Linden, New Jersey.

10. The defendant Lynn is the comptroller, a vice-president and shareholder of defendant Weis. He resides at 7 Kelso Place, Englishtown, New Jersey.

11. The defendants have engaged and are engaged in certain acts and practices within the Southern District of New York and elsewhere in connection with and constituting the violations complained of herein.

12. As a broker-dealer registered with the Commission the defendant Weis is subject to certain financial requirements including a requirement that it maintain a minimum ratio of aggregate indebtedness to net capital. Pursuant to Section 15(c)(3) of the Exchange Act and Rule 15c3-1(b)(2), the defendant Weis is not subject to the Commission's net capital rule provided that it is a member in good standing of a registered national securities exchange which imposes minimum net capital requirements upon such members. As a member of the New York Stock Exchange ("Exchange"), therefore, the defendant Weis is subject to that Exchange's net capital requirement (Rule 325). This rule requires, among other things, that a member's aggregate indebtedness not be greater than 15 times its net capital.

13. As a broker-dealer registered with the Commission, the defendant Weis is a member of the Securities Investor Protection Corporation ("SIPC") pursuant to Section 3(a)(2) of the Securities Investor Protection Act of 1970 (Pub. L. No. 91-598, December 30, 1970). Pursuant to Section 5(a)(1) of said act, plaintiff has notified SIPC of defendant Weis' financial difficulties and its failure to remain in compliance with the Exchange's net capital rule and the record keeping provisions to which it is subject.

14. From on or about April 1, 1972 to the date hereof, the defendant Weis has experienced a deteriorating financial situation and declining income. During this period the defendants Weis, Levine, Leit, Solomon, Kubie and Lynn have attempted, through the use of false and misleading financial statements, to induce and have induced subordinated lenders, creditors, stockholders and employees to loan to, and invest money in, the defendant Weis. Moreover, the firm has falsely represented to the investing public and other broker-dealers with whom it has and is transacting business, its financial condition and the safety of leaving monies and/or securities on deposit with, or in the custody of, the firm. In connection with the aforesaid activities the defendants have submitted false and inaccurate financial reports to the Commission and the Exchange and have made or caused to be made countless false and misleading entries on the books and records of the defendant Weis reflecting, among other things, an overstatement of the defendant Weis' earnings and net worth as at May 26, 1972 of approximately $2,000,000. These false entries, made during a period of low earnings and profitability have further exacerbated the firm's financial condition.

FIRST CAUSE OF ACTION

(Section 15(c)(3) of the Exchange Act, 15 U.S.C. 78o(c)(3) and Rule 17 C.F.R. 240.15c3-3 thereunder (Rule requiring fund for protection of customer cash and securities))

15. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 14 hereof.

16. From on or about May 18, 1973 to May 22, 1973, the defendant Weis has violated and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 15(c)(3) of the Exchange Act 15 U.S.C. 78o(c)(3) and Rule 17 C.F.R. 240.15c3-3 thereunder in that defendant Weis has failed to make such deposits in a Special Reserve Bank Account for the Exclusive Benefit of Customers as are required to be made.

17. From on or about May 18, 1973 to May 22, 1973, the defendant Weis has violated, and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 15(c)(3) of the Exchange Act 15 U.S.C. 78o(c)(3) and Rule 17 C.F.R. 240.15c3-3 thereunder in that defendant Weis has failed as required by said rule to give the Commission, the Securities Investor Protection Corporation and the New York Stock Exchange immediate telegraphic notice as is required by sub-paragraph (i) of the rule of its failure to make the required deposits as set forth in paragraph 16 above.

SECOND CAUSE OF ACTION

(Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 C.F.R. 240.17a-3 and 17a-4 thereunder ("Bookkeeping Rules"))

18. The Commission realleges and incorporates by reference each and every allegation set forth in paragraphs 1 through 17 hereof.

19. From on or about April 1, 1972 to the date hereof, the defendant Weis has violated and the defendants Levine, Leit,

Solomon, Kubie and Lynn have aided and abetted violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rules 17 C.F.R. 240.17a-3 and 17a-4 thereunder in that defendant Weis has failed to make, preserve and keep current and accurate certain accounts, ledger books and other records including but not limited to stock records, customer ledgers and trial balances as required by the Commission's Bookkeeping Rules.

THIRD CAUSE OF ACTION

(Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-5 thereunder -- Filing of a False Financial Report)

20. The Commission repeats and realleges by reference each and every allegations set forth in paragraphs 1 through 19 hereof.

21. On July 11, 1972, the defendant Weis filed a certified report of its financial condition as of May 26, 1972 pursuant to Section 17(a) of the Exchange Act and Rule 17a-5 thereunder.

22. In connection with the report mentioned in paragraph 21 above, the defendant Weis has violated and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 17(a) of the Exchange Act and Rule 17a-5 thereunder in that such report contained, among other things, a false and inaccurate overstatement of earnings and net worth of approximately $2,000,000.

FOURTH CAUSE OF ACTION

(Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder -- Supplemental Reporting Requirement)

23. The Commission repeats and realleges by reference each and every allegation set forth in paragraphs 1 through 22 hereof.

24. From on or about March 30, 1973 to the date hereof, the defendant Weis has violated and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder, in that defendant Weis failed, as required by the aforesaid Rule, to immediately notify by telegraph the Commission's home office, the Commission's New York Regional Office and the Exchange that it was in violation of the net capiatal rule to which it was subject.

25. From on or about April 28, 1972 to the date hereof, the defendant Weis has violated and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder, by failing, as required by the aforesaid Rule, to immediately notify by telegraph the Commission's home office, the Commission's New York Regional Office and the Exchange of its failure to maintain current and accurate books and records.

26. From on or about April 28, 1972 to the date hereof, the defendant Weis has violated and the defendants Levine, Leit, Solomon, Kubie and Lynn have aided and abetted violations of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11(a) thereunder by failing, as required by the aforesaid Rule, to file a report of financial condition within 24 hours of the date on which the initial notice was required pursuant to Rule 17 C.F.R. 240.17a-11(a)(1), and by the failure of the defendant Weis to file a report detailing what corrective measures were taken, if any, to rectify its faulty records pursuant to Rule 17 C.F.R. 17a-11(c).

FIFTH CAUSE OF ACTION

(Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder--Fraud in Connection with Securities Transactions)

27. The Commission repeats and realleges by reference each and every allegation set forth in paragraphs 1 through 26 hereof.

28. During the period from on or about April 28, 1972, to the date hereof, the defendants Weis, Levine, Leit, Solomon, Kubie and Lynn, by use of the means and instrumentalities of interstate commerce and of the mails, in effecting transactions in securities on behalf of customers of the defendant Weis and for the account of the defendant Weis have and are now inducing such customers and other broker-dealers to purchase and sell securities through the facilities and from the account of the defendant Weis, soliciting and accepting deposits of securities and monies from such customers and other broker-dealers and making payments of monies and deliveries to such customers and broker-dealers involving the use of the means and instrumentalities of transportation and communication in interstate commerce, and in connection with said activities, have and are employing devices, schemes and artifices to defraud, making untrue statements of material facts and omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were and are being made, not misleading and have and are engaging in acts, practices and a course of business which would and did operate as a fraud and deceit upon other broker-dealers and customers of the defendant Weis. As part of the aforesaid conduct and activities, the defendants Weis, Levine, Leit, Solomon, Kubie and Lynn among other things, would and did:

(a) Fail to disclose to its customers the grossly inaccurate and incomplete condition of the books and records of the defendant Weis and other violations of the federal securities laws alleged in paragraphs 15 through 27 above;

(b) Fail to disclose to its customers that it was not in compliance with the requirements of the net capital rule to which it was subject; and

(c) Induce, by the use of false and misleading financial statements, creditors, stockholders and employees of defendant Weis to lend money to, and invest money in, the defendant Weis.

REQUEST FOR RELIEF

29. The Commission repeats and realleges by reference each and every allegation set forth in paragraphs 1 through 28 hereof.

30. By reason of the defendant Weis' failure to comply with the net capital rule to which it is subject and its failure to comply with the Commission's record keeping and financial reporting and responsibility rules, the defendant Weis appears to be unable to meet its current financial obligations incurred and to be incurred in the ordinary course of business and pay customers and other broker-dealers funds to which they are entitled.

31. Defendant Weis now has in its possession, custody or control, assets relating to its business as a broker-dealer which it is dissipating and may continue to dissipate as well

as to transfer, sell, assign, pledge, or otherwise waste to the immediate and irreparable loss and damage of persons to whom money or securities are owing. This immediate and irreparable loss and damage is and may continue to occur unless this Court appoints a temporary receiver of the assets and property of the defendant Weis. Such a receiver should be authorized, empowered and directed to marshal the assets and property of the defendant Weis, distribute such assets, if necessary, among persons entitled thereto, maintain and keep current the books and records of the defendant Weis and take such further action as this Court may deem necessary and proper, including but not limited to the preparation of a report concerning the financial condition, books and records and financial reports of the defendant Weis. This report is necessary and is directly related to the defendant Weis' critical financial condition and particularly to its falsified books and records which have made it virtually impossible, as of this time, for the Commission, the Exchange or the defendant Weis' auditors to ascertain the exact status of its financial condition and to determine, among other things, the need for the Securities Investor Protection Corporation to make application to the Court to install its own trustee to liquidate the business of defendant Weis.

WHEREFORE, plaintiff respectfully demands:

I. That a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction be entered by the Court restraining and enjoining defendants Weis, Levine, Leit, Solomon, Kubie and Lynn, their officers, directors, agents, employees,

successors, attorneys and assigns, and those persons in active concert or participation with them (or any broker or dealer registered with the Commission of which Levine, Leit, Solomon, Kubie and Lynn may became principals or controlling persons) from, directly or indirectly, making use of the mails or means or instrumentalities of interstate commerce, to effect any transactions in or to induce the purchase or sale of securities (other than an exempted security, commercial paper, bankers' acceptances or commercial bills):

(a) while and at a time when the defendant Weis (or any other broker-dealer with respect to which Levine, Leit, Solomon, Kubie or Lynn may become principals or controlling persons) has failed to make such deposits in a Special Reserve Bank Account for the Exclusive Benefit of Customers as are required by Section 15(c)(3) of the Exchange Act 15 U.S.C. 78o(c)(3) and 17 C.F.R. 240.15c3-3 thereunder and at a time when the defendant Weis has failed to give the Commission and the New York Stock Exchange immediate telegraphic notice of such failure as is required by sub-paragraph (i) of the rule;

(b) while and at a time when the defendant Weis (or any other broker-dealer with respect to which Levine, Leit, Solomon, Kubie or Lynn may become principals or controlling persons) is unable to comply with the net capital rule to which it is subject;

(c) while and at a time when defendant Weis (or any other broker-dealer with respect to which Levine, Leit, Solomon, Kubie or Lynn may become principals or controlling persons) fails to make, keep, preserve and maintain accurate and current such accounts, ledgers, papers, books and other records as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-3 and 17a-4 thereunder;

(d) while and at a time when the defendant Weis (or any other broker-dealer with respect to which Levine, Leit, Solomon, Kubie or Lynn may become principals or controlling persons) fails to file a current and accurate annual report of financial condition as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-5 thereunder; and

(e) while and at a time when the defendant Weis (or any other broker-dealer with respect to which Levine, Leit, Solomon, Kubie or Lynn may become principals or controlling persons) fails to meet the telegraphic notice and supplemental financial reporting requirements of Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder.

II. That a Temporary Restraining Order, and Orders of Preliminary and Permanent Injunctions be entered by the Court ordering defendant Weis to report the extent of defendant Weis' financial difficulty and file a Form X-17A-11 (supplemental financial report), and to continue to make such reports and file such forms, as required by Section 17(a) of the Securities Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder.

III. That a Temporary Restraining Order, and Order of Preliminary and Permanent Injunctions be entered by the Court restraining and enjoining defendants Weis, Levine, Leit, Solomon, Kubie and Lynn their officers, directors, agents, employees, successors, attorneys and assigns and those persons in active concert or participation with them (or any broker-dealer registered with the Commission of which Levine, Leit, Solomon, Kubie or Lynn may become principals or controllings persons) from violating Section 17(a) of the Securities Act, 15 U.S.C. 77q(a) and Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder in connection with the offer, purchase and sale of any securities by:

(a) employing devices, schemes and artifices to defraud,

(b) making untrue statements of material facts or omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they

were made not misleading including, but not limited to:

(i) the true condition and of the firm's books, records and financial condition; and

(ii) holding itself out to the investing public and other broker-dealers that it is in compliance with the financial responsibility rules to which it is subject when in fact it is not,

(c) engaging in acts, practices and a course of business which would operate as a fraud and deceit upon any person.

IV. An Order restraining and enjoining defendants Weis, Levine, Leit, Solomon, Kubie and Lynn, their officers, directors, agents, employees, attorneys, successors, assigns, depositories, banks and those persons in active concert or participation with them and each of them except the temporary receiver or trustee herein appointed, from directly and indirectly, transferring, setting off, receiving, changing, selling, pledging, assigning or otherwise disposing or withdrawing any assets and property owned, controlled or in the possession of defendant Weis, including but not limited to customers' securities, free credit balances, fully paid for securities, and/or property pledged or hypothecated as collateral for loans.

V. An Order:

(a) Appointing a temporary receiver of defendant Weis until such time as SIPC makes a determination whether to apply for a trustee pursuant to Section 5(a)(2) of the Securities Investor Protection Act of 1970 (P.L. 9-598) and such a trustee is appointed by the court.

(b) Authorizing said temporary receiver to take possession and custody of all assets, books, records and other property of, and owned beneficially or otherwise by defendant Weis and all assets or property which said defendant carries or maintains for the account of others.

(c) Authorizing, empowering and directing the temporary receiver to take custody of all books and records and all other business papers of said defendant wherever located and, where practicable, to maintain and keep current such books and records and all other business papers, to have full power to marshal, collect and take charge of all such assets and property, prosecute all claims and choses-in-action and suits in equity on behalf of defendant Weis, settle any administrative proceedings instituted by plaintiff Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.; directing the temporary receiver to make a careful examination of defendant Weis' books

and records, financial reports, back office management and procedures and upon such examination to assess the capacity of the defendant Weis to meet its obligations to customers and to comply with the net capital and financial reporting rules of the Exchange and the hypothecation, record keeping and financial responsibility and reporting rules of the plaintiff Securities and Exchange Commission, and upon making such assessment to report to this Court on the need, if any, for the liquidation of defendant Weis and a recommendation of the means by which such liquidation is to be achieved until such time, and in the event that, a trustee is appointed pursuant to Section 5(a)(2) of the Securities Investor Protection Act of 1970(P.L. 91-598).

(d) Authorizing, empowering and directing the temporary receiver to employ such professional persons, including, but not limited to, accountants, attorneys and securities experts as well as such other employees as may be necessary in discharging the authority set forth in sub-paragraph (c) above.

VI. An Order directing that the expenses of any and all such examinations and reports as shall be made and prepared by the temporary receiver shall be borne by the defendant Weis.

VII. An Order directing, that in connection with, and in the course of, such examinations and reports as are made by the temporary receiver, the defendants Weis, Levine, Leit, Solomon, Kubie and Lynn shall lend their complete cooperation including, but not limited to, the supplying of all necessary information, personnel and the giving of complete access to any and all books and records.

VIII. An Order:

(a) staying and restraining all creditors of defendant Weis and all other persons, firms, banks and corporations, including sheriffs, marshals and other officers and their deputies, and the respective attorneys, servants, agents and employees of any and all such persons, firms, banks or corporations from commencing, prosecuting, continuing or enforcing any suit or proceeding, other than any proceeding instituted or to be instituted by plaintiff Securities and Exchange Commission, SIPC, or any receiver or trustee which the Court may appoint herein, or from executing or issuing or causing the execution or issuance of any court attachment, subpoena, replevin, execution or other process for the purpose of impounding or taking possession of or interfering with or creating or enforcing a lien upon any property owned by or in the possession of defendant Weis

or the temporary receiver or trustee which the Court may appoint herein, wheresoever situated, and from doing any act or thing whatsoever to interfere with the possession or management of said temporary receiver or trustee of the property and assets owned, controlled or in the possession of defendant Weis or in any way interfere with said temporary receiver or trustee in the discharge of his duties herein, or to interfere in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over defendant Weis.

IX. Such other relief as this Court may deem necessary and proper.

Dated: New York, New York
May 24, 1973

Respectfully submitted,

William D. Moran

WILLIAM D. MORAN
Regional Administrator

Attorney for Plaintiff
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Of Counsel:

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Barry Mandel

EXHIBIT 5 TO AFFIDAVIT OF ARNOLD I. ROTH.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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73 CRIM. 093

UNITED STATES OF AMERICA, :

-v- : INDICTMENT

ARTHUR J. LEVINE, SOL LEIT, : 73 Cr.
ALAN C. SOLOMON, JOEL KUBIE, and :
ROBERT K. LYNN, :

Defendants. :

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The Grand Jury charges:

1. From on or about the 1st day of January, 1971, up to and including the 30th day of May, 1973, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, the defendants, and Weis Securities, Inc., (hereinafter referred to as Weis), named herein as a co-conspirator but not as a defendant, and other persons to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, did combine, conspire, confederate and agree together and with each other to commit certain violations of federal law, to wit, to violate Title 18, United States Code, Sections 1341 and 2, Title 15, United States Code, Sections 78j(b) and 78q(a) and 17 C.F.R., Sections 240.10b-5 and 240.17a-3.

OBJECTS OF THE CONSPIRACY

2. Securities Fraud: It was a part of this conspiracy that the defendants and their co-conspirator Weis unlawfully, wilfully and knowingly would and did, directly and indirectly, in connection with the purchase and sale of securities, by the use of the means and instrumentalities of interstate commerce, to wit, the telephone, and by the use of the mails,

a) employ devices, schemes and artifices to defraud, and

b) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon actual and prospective customers, creditors and shareholders of Weis.

3. Mail Fraud: It was further a part of this conspiracy that the defendants and co-conspirator Weis, having devised a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses and representations, unlawfully, wilfully and knowingly, and for the purpose of executing said scheme and artifice, and attempting so to do, would place and cause to be placed in post offices and authorized depositories for mail matter, and would cause to be delivered by mail, certain matters to be sent and delivered by the Postal Service, to wit, false and fraudulent statements of the financial condition of Weis.

4. False Books and Records: It was further a part of this conspiracy that the defendants and co-conspirator Weis (a member of a national securities exchange and a broker or dealer registered pursuant to the Securities Exchange Act of 1934, as amended) did unlawfully, wilfully and knowingly falsely make and keep, and did cause to be falsely made and kept, books and records of Weis which purported to represent the true, accurate and current financial condition of Weis, when in truth and in fact, as the defendants then and there knew, the aforesaid books and records were materially false and fraudulent.

PARTICIPANTS

5. During the aforesaid period and specifically between March, 1972, and May 30, 1973:

a) Co-conspirator Weis was a brokerage firm and member of the New York Stock Exchange and the American Stock Exchange, having its principal place of business at 17 Battery Park Place, New York City, New York. Weis (formerly known as Weis Voisin & Cannon Co., Inc., and as Weis Voisin & Co., Inc.) transacted a business in securities on its own behalf and on behalf of approximately 50,000 customers and/or accounts. In the aforesaid period, Weis experienced substantial losses which endangered its net capital and significantly impaired its ability to remain solvent. As of May 24, 1973, Weis was suspended as a member of the New York and American Stock Exchanges. On May 30, 1973, Weis was placed in receivership under the Securities Investor Protection Corporation (SIPC).

b) The defendant ARTHUR J. LEVINE was the Chairman of the Board and Chief Executive Officer of Weis and, as such, had and exercised overall responsibility for Weis' operations.

c) The defendant SOL LEIT was the President and the Chief Operating Officer of Weis and, as such, had and exercised the primary responsibility for the day-to-day operation of Weis, including the preparation and maintenance of current and accurate books and records. In his capacity as President of Weis, the defendant SOL LEIT reported to the defendant ARTHUR J. LEVINE, the Chairman of the Board.

JS:ew

d) The defendant ALAN C. SOLOMON [illegible] Treasurer and an Executive Vice President and a Director of Weis. As Treasurer, the defendant ALAN C. SOLOMON was the chief financial officer of Weis, responsible for signing financial reports and statements of financial condition to be sent to customers and submitted to various regulatory agencies including, but not limited to, the United States Securities Exchange Commission, the New York Stock Exchange and the American Stock Exchange.

e) The defendant JOEL KUBIE was the Comptroller and an Executive Vice President and a Director of Weis. As Comptroller, the defendant KUBIE had responsibility for the accounting and related departments of Weis. The defendant KUBIE reported to the defendant LEIT, the President of Weis.

f) The defendant ROBERT K. LYNN was the Assistant Comptroller and a Vice President of Weis. The defendant LYNN was a subordinate of the defendant KUBIE until March 30, 1973, when the defendant LYNN became the Comptroller of Weis.

THE MEANS

6. Among the means by which the defendants and co-conspirator Weis would and did carry out the aforesaid conspiracy were the following:

a) The defendants LEVINE and LEIT would and did agree to fraudulently inflate and falsify the profit and loss statement of Weis for its fiscal year ending May 26, 1972 by reporting earnings of $1,700,000 before taxes, $1,022,000 after taxes whereas in truth and in fact as they then and there well knew Weis had actually suffered losses in the period in excess of $1,500,000.

b) Thereafter the defendants LEVINE and LEIT would and did instruct their employees, including the defendants KUBIE and LYNN, to falsify Weis' books and records to justify fraudulent statements of financial condition.

c) The defendants LEVINE, LEIT, KUBIE and LYNN would and did cause wholly fictitious entries to be made and maintained in the books and records of Weis, which entries not only fraudulently inflated the earnings, but also inflated the capital and assets of Weis as well as falsely understated Weis' liabilities.

d) The defendants LEVINE, LEIT, KUBIE and LYNN would and did fraudulently conceal from Weis' auditors, Touche, Ross & Co., the existence and nature of the aforesaid fraudulent books and records and, in addition, would and did create directly and indirectly wholly fictitious documentation for the aforesaid fraudulent entries.

JS:cw

e) The defendants LEVINE, LEIT and LYNN would and did cause to be [illegible] "woodwork" schedules, which schedules [illegible] what had been concealed in the [illegible] the items that had been falsified on the books and records or not included therein. Thereafter, the defendants LEVINE, LEIT, KUBIE and LYNN would and did meet and discuss the aforesaid "woodwork" schedules.

f) The defendant SOLOMON, upon being informed of the true facts, would and did meet with the defendants LEVINE, LEIT, KUBIE and LYNN and did thereafter participate in the falsification of Weis' books and records.

g) The defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN would and did mail and cause to be mailed to all of Weis' customers and/or accounts, statements of Weis' financial condition, which were materially false with respect to the assets, liabilities and retained earnings, among other items.

h) The defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN would and did cause to be filed with the Securities and Exchange Commission, New York Stock Exchange and American Stock Exchange false financial reports, to wit, a false SEC X 17A-5 Report and false Joint Regulatory Reports.

OVERT ACTS

In furtherance of the said conspiracy and to effect the objects thereof, the defendants and co-conspirator Weis did commit the following overt acts, in the Southern District of New York:

1. On or about the 28th day of April, 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices, 17 Battery Park Place, New York City, New York and there caused a reserve account of and for Scheinman, Hochstin and Trotta to be written off and a corresponding amount to be fraudulently credited to various and sundry income accounts in order to falsely inflate income by an amount in excess of $625,000.

2. On or about the 24th day of May, 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and caused entries to be made in an insurance claim account receivable relating to Winslow, Cohu and Stetson and entries to be made in the corresponding amount to various and sundry income accounts in order to falsely inflate income by an amount in excess of $500,000.

3. On or about the 25th day of May 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and there caused two checks to be issued, one for $125,735.25 to Arlen Properties and the second for $200,000 to 17 Battery Place Associates, which amounts were recorded on Weis' books and records as a payment for an asset known as leasehold improvements against liabilities. The defendants LEVINE, LEIT, KUBIE and LYNN thereafter at Weis' New York City office, did cause the former check to be redeposited in Weis' bank account and the latter check to be exchanged with a check of an associate of the defendant LEVINE, the proceeds of which

checks were fraudulently credited to Weis' [illegible], falsely inflating Weis' profit by an amount in [illegible] $325,000.

4. On or about the 26th day of May 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' offices in New York City and there fraudulently inflated and caused to be fraudulently inflated, the valuations of securities held in Weis' proprietary account as of said date, thereby falsely inflating unrealized gains to Weis in the approximate amount of $250,000.

5. On or about the 11th day of July 1972, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' New York office and there caused to be filed with the New York Regional Office of the SEC a false X-17A-5 report of financial condition.

6. In or about the end of July, 1972, or the early part of August, 1972, the defendants LEVINE, LEIT, [illegible] and LYNN were present at Weis' offices and there caused, directly and indirectly, a false statement of financial condition to be mailed to all Weis' customers and/or accounts.

7. In or about the end of December, 1972, or the early part of January, 1973, the defendants LEVINE, LEIT, KUBIE and LYNN were present at Weis' office in New York City and there caused to be mailed to all customers of Weis a statement of financial condition as of the end of the first half of Weis' fiscal year, which statement was false and fraudulent.

8. In or about January, 1973, the defendant SOLOMON caused false entries to be made on the books and records of Weis reflecting a proprietary position in Pan American [illegible] bonds to mature in 1984, when in fact Weis' position was in similar bonds but with a substantially lower value, which fraudulent entries falsely inflated Weis' unrealized gains by approximately $200,000.

9. On or about the 6th day of February, 1973, the defendants LEVINE, LEIT, KUBIE, SOLOMON and LYNN were present at Weis' office in New York City and there directly and indirectly caused a false entry to be made in the books and records reducing the amount of bank loans payable by Weis by $1,500,000 and thereafter fictitiously caused various and sundry income accounts to be credited with the corresponding amounts, thereby fraudulently inflating Weis' income for the period by $1,500,000.

10. In or about the middle of February, 1973, the defendants LEVINE, LEIT, KUBIE and LYNN were present in Weis' offices in New York City and there directly and indirectly caused an employee in the accounting department, Michael Fishbein, to be fired from his job because said employee had raised questions about the aforesaid fraudulent $1,500,000 write-off of the bank loan account referred to in paragraph 9 above.

11. On or about the 17th day of February, 1973, the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of January, 1973.

JS:ka

12. On or about the 17th day of March, 1973, the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of February, 1973.

13. On or about the 17th day of April, 1973, the defendants LEVINE, LEIT, SOLOMON, KUBIE and LYNN were present at Weis' office in New York City and there caused to be filed with the New York Stock Exchange and American Stock Exchange a false Joint Regulatory Report for the month of March, 1973.

(Title 18, United States Code, Section 371.)

COUNTS TWO THROUGH TEN

The Grand Jury further charges:

1. From on or about the 28th day of April, 1972, up to and including the 30th day of May, 1973, in the Southern District of New York, Weis Securities, Inc., 17 Battery Park Place, New York, N.Y. (hereinafter "Weis"), a member of a national securities exchange, directly transacted business in securities directly with and for others not members of a national securities exchange and, further, was a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law [17 C.F.R. 240-17a-3(a)] to make and keep accurate and current books and records.

2. From on or about the 28th day of April, 1972, up to and including the 30th day of May, 1973, and more specifically on or about the dates hereinafter described the defendants, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT K. LYNN, unlawfully, wilfully and knowingly, did falsely make and maintain Weis' books and records in a fashion which represented that Weis' financial condition was sound and that Weis was earning substantial income when, in truth and in fact, as the defendants then and there well knew, Weis was in serious financial trouble and was suffering significant losses which substantially impaired, and threatened to impair, its ability to remain solvent, which books and records hereinafter listed, were not current and accurate as hereinafter described:

Count	False Entry	False Entry	[illegible]	[illegible]
2	4/[illegible]8/7[illegible]	Write-off of [illegible] Hochstin & Grotta reserve account and credit of approximately $6[illegible]5,000 to income accounts	[illegible] in [illegible]	[illegible]
3	5/24/7[illegible]	Write-up in [illegible] claim receivable [illegible] Winslow, Cohu and Stetson and credit of $500,000 to income accounts	[illegible] income [illegible]0,000	[illegible] LEIT [illegible] LYNN
4	5/25/72	Write-off of leasehold improvement liabilities and credit of Weis' income by two checks totalling approximately $[illegible]	Inflated [illegible] income by approximately $[illegible],000	LEVINE LEIT KUBIE LYNN
5	5/26/7[illegible]	Inflation of valuations of securities held in Weis' proprietary account	Inflated Weis' unrealized by approximately $[illegible]0,000	LEVINE LEIT KUBIE LYNN
6	2/[illegible]8/7[illegible] - 3/30/73	Failure to accrue liability for rent for 13 months	Understated accrued expenses by approximately $540,000	LEVINE LEIT SOLOMON KUBIE LYNN
7	1/15/73 - 4/30/73	Recording Weis' purchase of Pan American [illegible] bonds, 1984, when, in fact, Weis had purchased bonds having a substantially lower value	Inflated Weis' unrealized income by approximately $[illegible],000	LEVINE LEIT SOLOMON KUBIE LYNN
8	2/6/73	Recording of payment $1,500,000 in bank loans and credit of income accounts	Inflated Weis' income $1,500,000	LEVINE LEIT SOLOMON KUBIE LYNN
9	3/22/73	Recording of payment of $2,000,000 in bank loans and credit to income accounts	Inflated Weis' income by $2,000,000	LEVINE LEIT SOLOMON KUBIE LYNN
10	1/1/73 - 4/30/73	Recording of sales of stock not owned by Weis	Inflated Weis' income by approximately $250,000	LEVINE LEIT SOLOMON KUBIE LYNN

(Title 15, United States Code, Sections 78q(a) and 78ff and 17 C.F.R. Sections 240.17[illegible]-[illegible], Title 18, United States Code, Section [illegible].)

COUNTS ELEVEN THROUGH THIRTEEN

The Grand Jury further charges:

1. From on or about the 1st day of January, 1971, up to and including the 6th day of May, 1973, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, unlawfully, wilfully and knowingly did, directly and indirectly, and by the use of the means and instrumentalities of interstate commerce and the mails, use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances in contravention of Rule 10b-5 [17 CFR Section 240.10b-5] of the rules and regulations of the United States Securities and Exchange Commission.

2. The allegations contained in paragraphs 5 and 6 of Count One of this Indictment are repeated and re-alleged as though fully set forth herein as constituting and describing some of the means by which ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, committed the offenses charged in Counts Eleven through Thirteen.

3. On or about the dates hereinafter set forth in Counts Eleven through Thirteen, in the Southern District of New York, the defendants, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, unlawfully, wilfully and knowingly, by the use of means and instrumentalities of interstate commerce and the mails as hereinafter set forth, did employ devices, schemes and artifices to defraud, and did engage in acts, practices and courses of business which operated as a fraud upon actual and prospective customers, creditors and shareholders of Weis Securities, Inc. (hereinafter "Weis"):

Count	Date	Method of Communication	Recipient	Matter
11	Late July or early August 1972	Mail	All customers of Weis	Audit [illegible] balance sheet prepared [illegible] Ross [illegible] the fiscal [illegible] ended [illegible] 1972.
12	Late December 1972 or early January 1973	Mail	All customers of Weis	Balance sheet of Weis [illegible] November 1972.
13	Early April, 1973	Mail	All customers of Weis	Balance sheet of Weis [illegible] February 1973.

(Title 15, United States Code, Sections 78j(b), [illegible] and 17 C.F.R. §240.10-b(5); Title 18, United States Code, Section 2.)

COUNTS FOURTEEN THROUGH SIXTEEN

The Grand Jury further charges:

1. From on or about the dates hereinafter set forth in Counts Fourteen through Sixteen, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEVY, ALAN SOLOMON, JOEL KUBIE and ROBERT LINN, the defendants, unlawfully, wilfully and knowingly did devise and intend to devise a scheme and artifice to defraud actual and prospective customers, creditors, and shareholders of Weis Securities, Inc. hereinafter "Weis" and others, to obtain money and property from said persons by means of false and fraudulent pretenses and representations, and, for the purpose of executing said scheme and artifice to defraud and attempting so to do, did place and cause to be placed in post offices and authorized depositories for mail matter, and did cause to be delivered by mail according to the directions thereon, certain matter to be sent and delivered by the Postal Service.

2. The allegations contained in paragraphs Five and Six of Count One of this Indictment are repeated and re-alleged as though fully set forth herein as constituting and describing some of the means by which the defendants committed the Offenses charged in Counts Fourteen through sixteen.

3. On or about the dates hereinafter set forth in Counts Fourteen through Sixteen, in the Southern District of New York, ARTHUR J. LEVINE, SOL LEIT, ALAN C. SOLOMON, JOEL KUBIE and ROBERT LYNN, the defendants, unlawfully, wilfully and knowingly did cause to be delivered by mail, according to the direction thereon, to the persons hereinafter set forth, the matters hereinafter set forth:

Count	Date	Addressees	Matter
14	Late July or early August 1972	All customers of Weis	Audited balance sheet prepared by Touche Ross & Co. for the fiscal year of Weis ending May 26, 1972
15	Late December 1972 or early January 1972	All customers of Weis	Balance sheet of Weis for November 1972, for the first half of Weis' fiscal year.
16	Early April 1973	All customers of Weis	Balance sheet of Weis for February 1973, for the third quarter of Weis' fiscal year.

(Title 18, United States Code, Sections 1341 and 2.)

JS:rc

COUNT SEVENTEEN

The Grand Jury further charges:

1. Weis Securities, Inc. (hereinafter "Weis") was a brokerage firm, a member of the New York Stock Exchange and American Stock Exchange, and was registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by 17 C.F.R. 240-17a-5, to file, following the end of Weis' 1972 fiscal year, a report of financial condition containing the information required by Form X-17A-5.

2. On or about the 11th day of July, 1972, in the Southern District of New York, ARTHUR J. LEVINE, JOEL LEIT, JOEL KUBIE and ROBERT K. LINN, the defendants, unlawfully, wilfully and knowingly did make, and cause to be made, statements in an X-17A-5 report of financial condition of Weis which statements were false and misleading with respect to material facts as follows:

a) Statements of the valuation of Securities held in proprietary accounts were falsely inflated.

b) Statement of retained earnings was falsely inflated by approximately $2,500,000.

c) Statement of leasehold improvement falsely overstated by at least $325,000.

d) Statement of commissions receivable on the last five trade dates falsely inflated.

e) Statement of insurance claim receivable re: Winslow, Cohen and Stetson and income falsely inflated by at least $500,000.

f) Statement of Scheiman, Hochstin & Trotta liquidation omnibus account and income falsely overstated by at least $625,000.

g) Statement of liabilities falsely understated by failure to report substantial liabilities.

h) Various and sundry asset and income items falsely inflated.

(Title 15, United States Code, Sections 78q(a) and 78ff and 17 C.F.R. Sections 240.17a-5, Title 18, United States Code, Section 2.)

COUNT EIGHTEEN

The Grand Jury further charges:

1. Weis Securities, Inc. (hereinafter "Weis") was a brokerage firm, a member of the New York Stock Exchange and American Stock Exchange, and was registered as a broker and dealer pursuant to Section 15 of the Securities Exchange Act of 1934, as amended, and therefore was required by law 17 C.F.R. 240-17a-5, to file, following the end of Weis' 1972 fiscal year, a report of financial condition containing the information required by Form X-17A-5.

2. On or about the 11th day of July, 1972, in the Southern District of New York, ARTHUR J. LEVINE, the defendant, unlawfully, wilfully and knowingly, did make and cause to be made a statement attached to the aforesaid X-17A-5 report of Weis, which statement was an oath and affirmation that to the best of his knowledge and belief the financial statement and supporting schedules were true and correct, whereas in truth and in fact, as the defendant LEVINE then and there well knew, said X-17A-5 report was materially false as hereinafter specified:

a) Statements of the valuation of securities held in proprietary accounts were falsely inflated.

b) Statement of retained earnings was falsely inflated by approximately $2,500,000.

c) Statement of leasehold improvement falsely overstated by at least $325,000.

d) Statement of commissions receivable on the last five trade dates falsely inflated.

e) Statement of insurance claim receivable re: Winslow, Cohu and Stetson and income falsely inflated by at least $500,000.

f) Statement [illegible]

[illegible]

account and income [illegible]

overstated [illegible]

g) State and [illegible]

understat[illegible]

substantial [illegible]

h) Various and [illegible]

[illegible]

(Title 15, United [illegible] 78ff and 17 C.F.R. Sections [illegible]
United States Code, [illegible])

Foreman

[illegible]
United States Attorney

EXHIBIT 6 TO AFFIDAVIT OF ARNOLD I. ROTH.

JUDGE CARTER

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

73 CRIM. 693

D. C. Form No. 100 Rev.

TITLE OF CASE			ATTORNEYS
THE UNITED STATES			For U. S.:
vs.			James Schreiber, AUS 264-6563
✓ ARTHUR J. LEVINE-	ALL COUNTS	9-20-73	
✓ SOL LEIT	1-17	9-23-73	
✓ ALAN C. SOLOMON	1, 6-16	9-12-74	
✓ JOEL KUBIE	1-17	9-20-73	For Defendant:
✓ ROBERT K. LYNN	1-17	9-25-73	

STATISTICAL RECORD	COSTS			DATE	NAME OR RECEIPT NO.	REC.	
(04)							
J.S. 2 mailed	Clerk						
J.S. 3 mailed	Marshal						
Violation	Docket fee						
Title 15,17,18							
Sec. 78J(b),78(ff),17CFR 240.10-b(5)240.17a-5 371,1341 & 2.							
(Eighteen Counts)							

DATE	PROCEEDINGS
	15:78(j)b & 78(ff) and 17 C.F.R,240.10b-5 & 240.17a-3(Use of mai in interstate commerce in a scheme and artifice to defraud in sale and offer of securities(Cts.2-13,17 & 18)18:1341 &2(Using U.S. mails in furtherance to defraud.(Cts. 14-16) 18:371 Conspi to do,(Ct.1)
7-16-73	Filed indictment.
7-30-73	Deft Levine,Leit & Solomon with attys present, plead not guilty defts R.O.R. bail limits - continental U.S., passports tobe sur to U.S. Atty by 4 PM 7-31-73- 10 days for motions.
	Ordered fingerprinted and photographed.
	Deft KUBIE with atty present-Court directs entry of not guilty R.O.R. to be fingerprinted and photographed., bail limits exten to Continental US, Passport to be surrendered by 4PM 7--31-73, days for motions.

OVER

DATE	PROCEEDINGS
	Cont'd- Deft Lynn-Court directs entry of not guilty plea. Case assigned to Judge Carter. Ward,J.
8-27-73	JOEL KUBIE- Filed notice of appearance by Finley, Kumble, Underberg & Roth, Esqs., Herbert F. Roth of counsel, 477 Madison Ave., NYC (371-5900)
8-27-73	A.C. SOLOMON- Filed notice of of appearance by Nickerson, Kramer, Lowenstein, Nessen & Kamin, Esqs., 919 Third Ave., NYC 10022 (688-1100)
8-27-73	SOL LEIT- Filed notice of appearance by Lee Feltman, Esq., 295 Mad. Ave., NYC 10017 (Phone 679-5450)
8-27-73	ARTHUR J. LEVINE- Filed notice of appearance by Joseph E. Brill, Esq., 233 B'way, NYC 10007 (MU 4-5610)
Sep-24-73	Alan C. Solomon- Filed affdvt. and notice of motion for an order supressing testimony given by deft. on 5-17-73
Sep-24-73	Alan C. Solomon- Filed defts memorandum of law in support of motion to suppress.
Sep-24-73	ARTHUR J. LEVINE- Filed affdvt. and notice of motion to dismiss indictment, or dismissing counts 1, 11, 12 and 13 etc.; for inspection and for a bill of particulars. Also for permission of deft. to join in each and every motion made in behalf of any of the co-defendants.
Sep-24-73	ARTHUR J. LEVINE- Filed memorandum of law in support of above motion.
Oct- 9-73	SOL LEIT- Filed affdvt. and notice of motion for inspection and discovery, a bill of particulars and for suppression, also to dismiss -- ret. 10-26-73
3-19-74	ARTHUR J. LEVINE (atty present) Deft. withdraws plea of Not Guilty and pleads GUILTY to Count 1 ONLY. P.S.R. ordered. Sentence adjourned without date. Deft. R.O.R.
4-17-74	Filed OPINION #40609 —For reasons indicated—The motion to suppress is, therefore, denied since no such showing has been made. However, if defendant so moves, he will be granted an evidentiary hearing on the eve of trial to enable him to establ that a conspiracy which would warrant suppression of the statement existed. So o CARTER,J. (m/n)
5-29-74	SOL LEIT (atty. present) withdraws his plea of Not Guilty and pleads GUILTY to Count ONLY. Pre-sentence report ordered. Probation Notified. Sentence without date. Present bail condition continued -CARTER,J.
5-29-74	JOEL KUBIE --- (attys. present) withdraws his plea of Not Guilty and Pleads GUILTY to Count #1 ONLY. Pre-sentence report ordered. Probation notified. Sent without date. Present bail condition continued - CARTER,J.
6-13-74	ALAN C. SOLOMON (atty present) Suppression Hearing begun before Carter,J.
6-14-74	Hearing continued and concluded, Dec. Res. - CARTER,J.
6-20-74	ROBERT K. LYNN (atty present) Deft. withdraws his plea of Not Guilty and Pleads GUIL to count 17 only. Pre-sentence report ordered. Sentence adjourned to 9/23/74 at in Rm. 1105. Deft. continued R.O.R. - CARTER,J.
Jul- 3-74	Alan C. Solomon- Filed defendants waiver of trial by Jury - approved: Carter,J.

— See pg 3 —

PROCEEDINGS

DATE	
Jul- 3-74	Alan C. Solomon- (Atty. present) deft. waives trial by jury. NON-JURY TRIAL begun on count 7 only before Carter,J. Trial concluded. Deft. guilty on count 7 -, P.I.S. ordered. Sentence adj. to Sept. 9, 1974 at 9:30 AM. Deft. continued R.O.R. -- Carter, J.
Jun-28-74	ALAN C. SOLOMON- Filed OPINION #40903...denying defendant's motion to suppress. - Carter, J. m/n
Aug- 2-74	ALAN C. SOLOMON - Filed ENDORSEMENT that defendant's motion to reconsider his motion to suppress is DENIED. So ordered - Carter, J. m/n
8-19-74	S-L Filed Transcript of record of proceedings, Dated May 28-74 SOL LEVI
7-23-74	S-Levine - Filed Transcript of record of proceedings, Dated 6-13-14 1974 Carter, J. 7-3-74
9-9-74	Filed Transcript of record 74 Tr. 32
9-12-74	SOLOMON - Filed JUDGMENT (atty.present) It is adjudged the imposition of sentence is hereby suspended and the defendant is placed on probation for a period of ONE(1)YR. A committed fine of $5,000 to be paid during the terms of his probation, subject to the standing order of probationof this court. Condition of probation is to wor at least 5 hours a week for the term of his probation in some capacity involving expenditures of energy and of time and the contribution of mind, with a group of under privileged persons. The program to be worked out with the probation officer and approved by the court, and to involve periodic reports to the court concerning its progress. Counts 1,2,3,4,5,6,8,9,10,11,12,13,14,15 and 16 are dismissed with the consent of the Government on the motion of the defendant's counsel - CARTER,J. (copies issued)
Sep.20-74	Filed Pre-sentencing Memorandum on behalf of Joel Kubie
Sep.23-74	Filed Notice of Appeal for Deft. Alan C. Solomon from a judgment of conviction of this Court entered on 9/12/74
9-23-74	SOL LEVI- Filed JUDGMENT (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2)YEARS the execution of sentence is suspended and the defendant is hereby placed on probation for a period of ONE(1)YEAR subject to the standing probation order of this Court. On defendant's counsel's motion counts 2 through 17 are dismissed with the consent of the Government. - CARTER,J. (copies issued)
9-25-74	LYNN, ROBERT K. - Filed JUDGMENT(atty present)It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his Authorized representative for imprisonment for a period of TWO(2)YEARS, execution of sentence is suspended, and the defendant is hereb y placed on probation for a period of TWO(2)YEARS, subject to the standing probation order of this Court. On Defendant counsel's motion counts 1 through 16 are dismissed with the consent of the Govt. A Special Condition of probation being that the defendant enroll i a community program for a period of ONE(1)YEAR of his probation. The program is to be worked out with the probation department and is subject to the approval of the Court - CARTER,J. (copies issued)

PROCEEDINGS

-74 ARTHUR J. LEVINE (atty present) It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO(2½)YEARS and on condition that the defendant be confined in a jail type institution for a period of SIX(6)MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is hereby placed on probation for a period of TWO(2)YEARS, subject to the standing probation order of this Court. Pursuant to Title 18, United State Code, Section 3651. On defendant's counsel's motion counts 2 through 18 are dismissed with the consent of the Government. The defendant is to surrender to the United States Marshal for service of sentence on October 22, 1974- CARTER, J. (copies issued)

-74 JOEL KUBIE (atty present) It is adjudged that the defendant is hereby committed to the cust of the attorney general or his authorized representative for imprisonment for a period of TWO(2½)YEARS and on condition that the defendant be confined in a jail type institution for a period of SIX(6)MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant is hereby placed on probation for a period of TWO(2)YEARS, subject to the standing probation order of this Court. Pursuant to Title 18 UnitedStates Code Section 3651. On defendant's counsel'motion counts 2 through 17 are dismissed with the consent of the Government. The defendant is to surrender to the United States Marshal for service of sentence on October 22, 1974. CARTER,J.(copies issued)

74 Filed for JOEL KUBIE - Pre-sentening Memorandum

-74 JOEL KUBIE - Filed Notice of Appeal to the U.S.Court of Appeals for the second circuit from the final judgment on 9/24/74 (m/n to Deft, U.S.Atty)

EXHIBIT 7 TO AFFIDAVIT OF ARNOLD I. ROTH.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

NORMAN RICH, SHELDON SCHIFF and HOWARD SCHIFF, as trustees of the West Side Corp. Profit Sharing Plan and CHARLES SHURPIN, on behalf of themselves and all others similarly situated, Plaintiffs,	74 Civ. 772 (CLB) Second Amended Compla Class Action Plaintiffs demand a trial by jury
-against-	
TOUCHE ROSS & CO., Defendant.	

Plaintiffs, by their attorneys, JULIEN & SCHLESINGER, P.C., complaining of the defendant, allege as follows:

JURISDICTION AND VENUE

1. Plaintiff-trustees are trustees of the West Side Corp. Profit Sharing Plan.

2. The West Side Corp. is a corporation duly organized and existing under and by virtue of the laws of the State of New York. The Profit Sharing Plan is a plan organized by the said corporation for the benefit of its employees.

3. At all times hereinafter mentioned, the West Side Corp. Profit Sharing Plan maintained an account with Weis Securities, Inc. ("Weis").

4. At all times hereinafter mentioned, the plaintiff CHARLES SHURPIN ("Shurpin"), maintained a brokerage account for securities with Weis.

5. Upon information and belief, the defendant TOUCHE ROSS & CO. ("Touche Ross") is a partnership and is engaged in the business of serving as certified public accountants with its principal offices in the City and State of New York.

6. The jurisdiction of this Court is based upon 15 U.S.C. 78aa and the rules of pendent jurisdiction.

7. Venue is properly situated in the United States District Court for the Southern District of New York since the defendant has its principal place of business within the Southern District of New York and many of the acts complained of originated and took place within the Southern District of New York.

CLASS ACTION ALLEGATIONS

8. This action is brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

9. Plaintiffs are bringing this action on their own behalf and on behalf of all persons similarly situated who were customers of Weis on May 24, 1973 and had securities sold for them by the SIPC Receiver appointed for Weis and for those persons who had been customers of Weis prior thereto during the period that the defendant Touche Ross acted as the indpendent auditors for Weis, had purchased securities through Weis and permitted those securities to remain in Weis' possession up to and through May 24, 1973.

10. Upon information and belief, there were approximately 25,000 such persons who were customers of Weis at the aforesaid time and during

11. The members of the class are so numerous that it is impractical to bring them all in front of this Court. There are basic common questions of law and fact involved herein with respect to all members of the class, which questions predominate. The common questions of law and fact all arise out of the acts complained of.

12. The claims alleged by the plaintiffs are, if substantiated, applicable to every member of the class. The claims of the plaintiffs are typical of the class, and the plaintiffs will fairly and adequately represent the interests of the class. If separate cases are started by each of the individual customers of Weis, there is a possibility of conflicting judgments being issued by various courts. This class action is superior to all available methods for the fair and efficient adjudication of the controversy.

13. Plaintiffs have been gravely injured and deprived of their property as a result of the defendant's actions and have an interest in the success of this litigation and will fairly and adequately protect the interests of the class as a whole.

AS AND FOR A FIRST CLAIM FOR RELIEF

14. At all times hereinafter mentioned, Weis was a New York corporation engaged in the securities business. Weis acted as a broker-dealer and was a member of the New York Stock Exchange and various other exchanges.

15. At all times hereinafter mentioned, the defendant Touche Ross held itself out as professionals and as competent certified public accountants to the public at large.

16. Upon information and belief, at all times hereinafter mentioned the defendant Touche Ross between January 1971 and May 24, 1973 acted as the independent auditor for Weis, conducted audits of Weis' books and records certified its annual financial statements and completed its financial questionnaires and reports which were submitted to the Securities and Exchange Commission.

17. That at all times hereinafter mentioned, while the defendant was the indpendent auditor for Weis, it issued and certified various financial statements of Weis, including, but not limited to, the annual statement for Weis for the fiscal year ending May 26, 1972 and Form X-17A-5 which was filed with the Securities and Exchange Commission.

18. That the various financial statements of Weis, and particularly the Annual Report for Weis' fiscal year ending May 26, 1972, which the defendant certified as independent auditors were distributed by means of the United States mails to all of the customers of Weis, including the plaintiffs herein.

19. That the defendant during its audits of Weis and in certifying Weis' financial reports, and in particular Weis' Annual Report for the fiscal year ending May 26, 1972, failed to follow generally accepted accounting principles. That Weis' financial reports which were certified by the defendant, and in particular its annual report for the year ending May 26, 1972, were false and misleading in material respects, contained misrepresentations and failed to disclose information which should have been disclosed in those reports.

20. That among the false and misleading statements contained in Weis' financial reports for which the defendant acted as independent auditors and which the defendant had on certain instances certified were the following:

(a) The Annual Report for Weis' fiscal year ending May 26, 1972:

(i) Failed to reveal that Weis had written off the reserve account of Scheinman, Hochstin & Trotta and credited approximately $625,000 to various income accounts. This had the effect of inflating Weis' income by approximately $625,000.

(ii) Falsely added an insurance receivable claim of approximately $500,000.

(iii) Fr lently credited Weis' income by $325,000 by falsely writing off leasehold improvement liabilities.

(iv) Falsely and fraudulently inflated the value of securities held in Weis' proprietory account for approximately $250,000.

(v) Falsely and fraudulently stated commissions receivable for the last five trade days prior to the conclusion of Weis' fiscal year on May 26, 1972, resulting in crediting Weis with additional income of approximately $250,000.

(vi) Fraudulently failed to accrue Weis' liability for rent resulting in the false crediting to Weis of approximately $270,000.

(b) The Balance Sheet of Weis for November 1972 for the first half of Weis' fiscal year incorporated the material omissions and misrepresentations contained in Weis' Annual Report for the fiscal year ending May 26, 1972 and in addition contained the following misrepresentations and failed to disclose the following material facts:

(i) Failed to accrue Weis' liability for rent resulting in the false crediting to Weis of approximately $400,000.

(ii) Falsely recorded Weis' purchase of Pan American 4 1/2 percent bonds 1984, inflating Weis' income by approximately $200,000.

(c) The Balance Sheet of Weis for February 1973 for the third quarter of Weis' fiscal year incorporated the material omissions and misrepresentations contained in Weis' Annual Report for the fiscal year ending May 26, 1972 and in addition contained or failed to disclose the following material misrepresentations and/or omissions:

(i) Falsely recorded bank loans and credits in the amount of $1.5 million.

(ii) Falsely credited the sales of securities to Weis for securities not owned by Weis in the amount of approximately $250,000.

That in addition to the foregoing false, fraudulent and misleading misrepresentations, the financial statements of Weis which were audited and/or certified by the defendant contained various other false and fraudulent material

misrepresentations and omissions.

21. That the defendant filed the Annual Report for Weis' fiscal year ending May 26, 1972 and Form X-17A-5 with the Securities and Exchange Commission. The defendant falsely certfied to the Securities and Exchange Commission and to the plaintiffs that its audit was made in accordance with generally accepted auditing standards. In fact, the defendant had not followed generally accepted auditing standards or accounting principles and had violated the rules of the Securities and Exchange Commission and of the New York Stock Exchange which set out the standards and procedures to be followed by an independent auditor of a brokerage firm. In particular, the defendant failed to follow those generally accepted accounting principles and standards required by 17 C.F.R. 240.17a-5 and the New York Stock Exchange.

22. That among other things, the Annual Report for 1972 certified by the defendant failed to reveal that Weis was not maintaining a special reserve bank account for the exclusive benefit of customers as required by the Securities and Exchange Commission pursuant to 17 C.F.R. 240.15c 3-3(e).

23. That the defendant in issuing and certifying the aforesaid financial statements knew or should have known that they would be filed with the Securities and Exchange Commission and relied upon by the public at large and that those reports would be distributed to Weis' customers and in particular that Weis' customers would rely upon the aforesaid reports in determining whether or not to purchase securities through Weis and to entrust their securities to Weis.

24. That a reasonable investor would have relied upon the aforesai reports in determining whether or not to purchase securities through Weis and to permit their securities to remain in Weis' possession.

25. That the plaintiffs did rely upon the materially false, fraudulent and misleading financial reports concerning Weis for which the defendant had acted as independent auditor and which it had certified.

26. That the plaintiffs would not have acted as they did had they known of the information which was fraudulently withheld, concealed and misrepresented to them by Weis'financial statements which were certified by the defendant.

27. That due to the aforesaid conduct on the part of the defendant, the plaintiffs continued to purchase securities through Weis and to permit their securities to remain in Weis' possession.

28. That on or about May 24, 1973 Weis' financial condition had deteriorated to the extent that a Securities Investor Protection Corporation ("SIPC") Receiver was appointed.

29. That the plaintiff West Side Corp. Profit Sharing Plan purchased the following securities through Weis based upon Weis' false and fraudulent financial statements certified by the defendant:

(i) November 27, 1972 - 800 shares - Uniroyal, Inc.

(ii) March 6, 1973 - 700 shares - Guardian Industries Corp.

(iii) April 10, 1973 - 300 shares - Libby-Owens-Ford Co.

(iv) April 17, 1973 - 1000 shares - Guardian Industries Corp.

30. In addition the plaintiffs had the following securities sold out for them by the SIPC Receiver:

West Side Corp. Profit Sharing Plan

Number of Shares	Name of Security	Price
67	Central Maine Power Co.	17 7/8
2	El Paso Natural Gas Co.	15 1/2
201	Guardian Industries Corp.	21
69	Libbey-Owens -Ford Co.	32 1/2
3	Manufacturers Hanover Corp.	30 1/4
93	National Cash Register Co.	34 3/8
4	Union Electric Co.	17 1/4
67	Uniroyal Inc.	12 1/4

(See Exhibit A)

Charles Shurpin

48	Cadence Industries Corp.	4 1/2
619	Great Western Financial Corp.	16 1/4
1	Hudson Pharmaceutical Corp. A	2 1/8
206	SOS Consolidated Inc.	7 3/8

(See Exhibit B)

31. That if the plaintiffs had been aware of the true financial condition of Weis, they would not have purchased securities through Weis or permitted their securities to remain in Weis' possession. That the plaintiffs were induced to maintain and entrust their securities with Weis up to and until May 24, 1973 when a SIPC Receiver was appointed for Weis by reason of the false, fraudulent and misleading financial statements certified by the defendants.

32. That the defendant knew or should have known that Weis' financial condition was not what it was represented to be in the financial statements certified by the defendant. If the defendant had followed generally accepted accounting principles and standards, it would have discovered the true financial condition of Weis.

33. That the defendant did not attempt to discover Weis' true financial condition, but relied upon the false and misleading entries in the books and records of Weis in violation of generally accepted accounting principles and standards in order to maintain its position as Weis' independent auditors.

34. That the defendant's action in certifying materially false, fraudulent and misleading financial statements and in filing such statements with the Securities and Exchange Commission when it knew or should have known of the material misrepresentations and omissions contained in those financial statements was in violation of the Securities Exchange Act and the rules promulgated thereunder, in particular, 15 U.S.C. 78j; Rule 10b-5; 15 U.S.C. 7 r; and Rule 17a-5.

AS AND FOR A SECOND CLAIM FOR RELIEF

35. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the paragraphs of the complaint numbered "1" through and inclusive of "34", with the same force and effect as though more fully set forth herein at length.

36. That the officers and employees of Weis maintained false, fraudulent and misleading records and books of Weis' financial condition.

37. That the officers and employees of Weis knew that Weis was in financial difficulty and in violation of the net capital rules (Rule 325) of the New York Stock Exchange.

38. That in order to induce the public at large and its customers to make use of Weis' services as a broker in purchasing securities and to induce Weis' customers to entrust their securities to Weis, the defendant and W disseminated fraudulent and materially misleading financial statements and reports to the public at large and to the plaintiffs in particular in order to give the appearance that Weis was financially solvent.

39. That the aforesaid false, fraudulent and misleading statements of Weis were certified by the defendant as the independent auditor for Weis.

40. That the actions of Weis as aforesaid were in violation of the Securities Exchange Act and in particular 15 U.S.C. 78j; Rule 10b-5; 15 U.S.C. 78r and Rules 15c 3-3(e) and 17a-5.

41. That the defendant as Weis' independent auditor had a duty to inquire and to discover the true state of Weis' financial condition and to use generally accepted accounting principles in auditing Weis. That the defendant in fact certified to the public at large and certified to the plaintiffs and to the Securities and Exchange Commission that it had followed generally accepted accounting procedures during its audit of Weis.

42. That the defendant knew that Weis' customers, the plaintiffs herein, were the beneficiaries of the defendant's duty as an independent auditor and that Weis' customers would rely upon the financial statements certified by the defendant in continuing to purchase securities through Weis and in entrusting their securities to Weis.

43. That the defendant by acting as aforesaid in failing to follow generally accepted accounting principles in conducting its audit of Weis breached its duty of properly auditing Weis and inquiring into Weis' financial condition.

44. That concomitant with its duty to inquire into Weis' financial condition and to properly audit Weis, the defendant breached its duty of disclosing to the plaintiffs material facts which should have been revealed to the plaintiffs and which the defendant would have discovered had it properly audited Weis in accordance with generally accepted accounting principles.

45. That if the defendant had properly audited Weis and revealed Weis' true financial condition to the plaintiffs, the plaintiffs would not have continued to purchase securities through Weis and to entrust their securities to Weis. In addition, Weis' financial condition as of its close of business

on May 26, 1972 had not yet deteriorated to the extent that it would have required the appointment of a SIPC receiver with all of its attendant consequenc for the plaintiffs.

46. If the defendant had properly audited Weis and followed generally accepted accounting principles, it would have discovered and disclos the fraudulent and false entries made on Weis' books and records and Weis' financial difficulties prior to Weis' condition deteriorating to the extent that a SIPC receiver was necessary.

47. The defendant by acting as aforesaid is chargeable with aiding and abetting Weis' violation of the Securities Exchange Act and in particular Sections 15 U.S.C. 78j; Rule 10b-5; 15 U.S.C. 78r and Rules 15c 3-3(e) and 17a-5.

AS AND FOR A THIRD CLAIM FOR RELIEF

48. Plaintiffs repeat, reiterate and reallege each and every allegation contained in the paragraphs numbered "1" through and inclusive of "34" and "36" through and inclusive of "47", with the same force and effect as though more fully set forth herein at length.

49. While acting as the independent auditors of Weis and certifying its financial statements, the defendant Touche Ross, negligently and recklessly, in violation of its duties and with a disregard for generally accepted accounting principles and procedures, failed to properly inspect and audit the books and records of Weis so as to reveal large discrepancies and false and misleading entries on the books, records and financial statements of Weis.

50. That the defendant knew and intended that the plaintiffs would rely upon its financial statements with regard to purchasing securities through Weis and entrusting their securities to Weis.

51. The negligent acts of the defendant, Touche Ross, in failing to ascertain and reveal the true financial condition of Weis in the reports and financial statements which it certified, induced the plaintiffs to continue to maintain their accounts with Weis and to leave their securities in the possession of Weis up to and including May 24, 1973.

52. That the plaintiffs are in no way contributorily negligent.

53. By reason of the foregoing, the plaintiffs and all other customers of Weis similarly situated were damaged in that they were induced to maintain and entrust their securities with Weis up to and until May 24, 1973 when a SIPC receiver was appointed for Weis, and they were, therefore, unable to receive the full value of their securities which they had deposited with Weis; had certain securities sold out for them by the SIPC receiver at prices which the plaintiffs would not have sold had a forced sale not been made as of May 24, 1973; that the plaintiffs were unable to obtain their account and that their assets were frozen for a considerable period of time. The plaintiffs were compelled to accept odd lots of securities rather than round lots; that the sale of securities caused the plaintiffs to incur unfavorable tax consequences; that the plaintiffs were unable to obtain their securities and trade in them; and that the plaintiffs were otherwise damaged.

WHEREFORE, the plaintiffs demand judgment as follows:

(a) declaring this action to be a proper class action;

(b) requiring the defendant to repay each plaintiff and each class member for the loss each has sustained as a result of the acts of the defendant as alleged herein;

(c) awarding the plaintiffs the cost and expenses of this action, including reasonable counsel fees; and

(d) granting the plaintiffs such other and further relief as may be just and proper.

JULIEN & SCHLESINGER, P.C.

By Ernest A. Schlesinger
A Member of the Firm
Attorneys for Plaintiffs
2 Lafayette Street
New York, New York 10007
(212) 962-8020

Period	Account	R. R.	Page
-15-73 13	63-65031	034	1
29051	S.S./I.D. NO. 13-1465730		

TSIOS CORP PROFIT SHARING
ATTD 11/13/60 SAM SCHIFF
ARY RICH & LOUIS DULBERG
S ATT NORMAN RICH
-10 150TH STREET
TICA N Y 11433

IN ACCOUNT WITH

EDWARD S. REDINGTON, TRUSTEE
FOR THE LIQUIDATION
OF THE BUSINESS OF
WEIS SECURITIES, INC.
P. O. BOX 109
BOWLING GREEN STATION
NEW YORK, N. Y. 10004

Date	Bought, Received or Long	Sold, Delivered or Short	Description	Price or Entry	Amount Charged	Amount Credited	Effect	Balance Beg. of Day
06 08			OPENING BALANCE MARGIN ACCOUNT			215.66	21	
06 08			BALANCE PAID SEE NOTE 2	BKP	11,869.91		21	
06 08			FREE CR. BAL. NOTE 1	BKP	215.66		21	
06 08		67	CENTRAL MAINE POWER CO	17 8750		1,197.63	21	
06 08		2	EL PASO NATURAL GAS CO	15 5000		31.00	21	
06 08		201	GUARDIAN INDUSTRIES CORP	21		4,221.00	21	
06 08		69	LIBBEY-OWENS-FORD CO	32 5000		2,242.50	21	
06 08		3	MANUFACTURERS HANOVER CORP	30 2500		90.75	21	
06 08		93	NATIONAL CASH REGISTER CO	34 3750		3,196.88	21	
06 08		4	UNION ELECTRIC CO	17 2500		69.00	21	
06 08		67	UNIROYAL INC	12 2500		820.75	21	
06 08			CLOSING BALANCE MARGIN ACCOUNT			0.00	21	
06 15								
	33		CENTRAL MAINE POWER CO	POS			21	33
	300		CHARTER NEW YORK CORP	POS			21	300
	110		DETROIT EDISON CO	POS			21	110
	4		DETROIT EDISON CO 5.50% CV PFD	POS			21	4
	98		EL PASO NATURAL GAS CO	POS			21	98
	117		FRANKLIN NEW YORK CORP	POS			21	117
	799		GUARDIAN INDUSTRIES CORP	POS			21	799
	100		INTERNATIONAL PAPER CO	POS			21	100
	231		LIBBEY-OWENS-FORD CO	POS			21	231
	221		MANUFACTURERS HANOVER CORP	POS			21	221
	100		MARINE MIDLAND BANKS INC	POS			21	100
	407		NATIONAL CASH REGISTER CO	POS			21	407
	198		TEXAS GAS TRANSMISSION CORP 1.50 CONV VTG PREF	POS			21	198
	296		UNION ELECTRIC CO	POS			21	296
	733		UNIROYAL INC	POS			21	733
	2500		AVCO CORP SUB DEB -REG- INT M31&N30 7.500 DUE 11/30/93	POS			21	2500
	4500		MEAN UNITED CV S/D -REG- OLD ISSUE 5.500 DUE 03/01/93	POS			21	4500
			END OF STATEMENT		**********	**********		**********

Letter is enclosed which ex-
ains the transactions shown
this statement. If you have
further questions, please
to the Trustee at the
address.

SEE ENCLOSED LETTER FOR EXPLANATION OF THIS STATEMENT

Exhibit "A"

224a

DATE	SHORT TERMS OR SHORT	LONG TERMS OR LONG	DESCRIPTION	PRICE OR EXTRY	AMOUNT CHARGED	AMOUNT CREDITED	REF TYP	COMMISS OR SEC. OR S/P.
0000			OPENING BALANCE MARGIN ACCOUNT		9,201.39		22	
0000			BALANCE PAID SEE NOTE 2	BKP	2,594.74		22	
0000		43	CADENCE INDUSTRIES CORP	4 5000		216.00	22	
0000		615	GREAT WESTERN FINANCIAL CORP	16 2500		10,058.75	22	
0000		1	HUDSON PHARMACEUTICAL CORP A	2 1250		2.13	22	
0000				7 3150		1,519.25	22	
0000		205	SCS CONSOLIDATED INC			0.00	22	
0615			CLOSING BALANCE MARGIN ACCOUNT					
							22	100
	100		AMER BOOK-STRATFORD PRESS INC	POS			22	
	5		EASTERN AIR DEVICES INC	POS			22	236
	300		GOLDFIELD CORP	POS			22	159
	200		GREAT AMERICAN INDUSTRIES INC	POS			22	7
	7		HUDSON PHARMACEUTICAL CORP A	POS			22	200
	200		K & F INDUSTRIES INC	POS			22	159
	159		SEDGWICK INDUSTRIES INC CLASS A	POS			22	100
	100		TRANSITRON ELECTRONIC CORP	POS				
			END OF STATEMENT					

DIV 0.00 INT 0.00 PLN 0.00 YTD DV 0.00 YTD INT 0.00 YTD PLN 0.00 0.00

PLEASE REFER TO EXPLANATION OF THIS STATEMENT

EXHIBIT 8 TO AFFIDAVIT OF ARNOLD I. ROTH.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

SHELDON BERGER. ABRAHAM CYZNER, HARVEY DEUTSCHMAN, JERRY FASTMAN, WILLIAM Z. FOX, GERALDINE GIRSHEK, SAMUEL GLASSMAN, MARVIN GOLDBERG, PHILLIP GRABER, JOSEPH GUBITOSI, MARTIN JUMAN, ANTHONY MARCHESE, GARY POST, HOWARD SALTZMAN, HOWARD LEVY, J. J. LONGLEY, MORTON SCHULMAN, RICHARD SHULTZ, HENRY SHULZ, STEVEN XENIDES,	:	74 Civ. 186
Plaintiffs,	:	SECOND AMENDED COMPLAINT
- against -	:	
WEIS SECURITIES. INC., ARTHUR LEVINE, SOL LEIT, ALAN SOLOMON, JOEL KUBIE, ROBERT LYNN, STUART VOISIN, TOUCHE ROSS & CO., JAMES COHEN and SIDNEY HERTZBERG,	:	
Defendants.	:	

- x

Plaintiffs, by their attorneys, Feiner Curtis Smith and Goldman, complaining of the defendants, respectfully allege upon information and belief:

1. Plaintiffs bring this action to recover money damages suffered as a proximate result of the fraudulent acts and practices in which the defendants Weis Securities, Inc. ("Weis"), Arthur Levine ("Levine"), Sol Leit ("Leit"), Alan Solomon ("Solomon"), Joel Kubie ("Kubie"), Robert Lynn ("Lynn"), Stuart Voisin ("Voisin"), Sidney Hertzberg ("Hertzberg"), James Cohen ("Cohen"), and Touche, Ross & Co. ("Touche, Ross"), have engaged which constitute violations of Section 12(2), 15 and 17(a) of the Securities Act of 1933 ("Securities Act") 15 U.S.C.

771(2), 77o and 77q(a), Sections 10(b), 17(a), 18 and 20 of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78j(b), 78q(a), 78r and 78t; and Rule 17 C.F.R. 240.10b-5, thereunder.

2. This Court has jurisdiction of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. 78 aa and Section 22(a) of the Securities Act, 15 U.S.C. 77v(a) and the principles of pendant jurisdiction.

3. The United States Securities and Exchange Commission ("Commission"), pursuant to the authority contained in Sections 10(b), 15(c) (3), 17(a) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b), 78(c) (3), 78q(a) and 78w(a) has prescribed for the protection of investors and in the public interest Rules 17 C.F.R. 240.10b-5, 15c3-3, 17a-3, 17a-4, 17a-5 and 17a-11 under said Act which are now and at all times herein relevant were in effect.

4. The plaintiffs were all formerly employed by Weis Securities, Inc. ("Weis"), formerly known as Weis, Voisin & Co., Inc. and are all Weis shareholders.

5. Defendant Weis was, at all times relevant hereto, a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. 78n(b). It was a member of the New York Stock Exchange, Inc., the American Stock Exchange and other national stock exchanges as well as a member of the National Association of Securities Dealers, Inc., and maintained an office and principal place of business at 17 Battery Place North, New York, New York.

6. On May 24, 1973, the Commission commenced an action in this Court seeking injunctive relief and the appointment of a temporary receiver (73 Civ. 2332). The relief sought by the Commission has been granted and Weis' assets are presently being liquidated by a trustee.

7. The defendant Levine is the former Chairman of the Board of Directors, Chief Executive Officer, and was a substantial shareholder of Weis. He resides at 985 Fifth Avenue, New York, New York.

8. The defendant Leit was president, a director and is a substantial shareholder of defendant Weis, and as its chief operating officer had and exercised primary responsibility for the day to day operations of Weis, including the preparations and maintenance of books and records of account. He resides at 25 Sutton Place South, New York, New York.

9. The defendant Solomon was treasurer, director and is a shareholder of defendant Weis. Solomon, as treasurer, was the chief financial officer of Weis and responsible for signing financial reports and statement of financial conditions prepared, disseminated and supplied by Weis and submitted or filed with various regulatory and self-regulatory bodies including the New York Stock Exchange, the American Stock Exchange and the United States Securities and Exchange Commission. He resides at 350 Evansdale Road, Scarsdale, New York.

10. The defendant Kubie was, until April 8, 1973, the comptroller, executive vice-president, director and is a shareholder of defendant Weis. Kubie as controller, had responsibility

for the account ·g and related departments f Weis. He resides at 1321 Sunnyfield Drive, Linden, New Jersey.

11. The defendant Lynn was the assistant comptroller, a vice president and is a shareholder of defendant Weis. For a brief period following April 8, 1973, Lynn became controller. He resides at 7 Kelso Place, Englishtown, New Jersey.

12. The defendant Voisin was Chairman of the Board of Directors of Weis and a substantial shareholder during a substantial portion of the relevant period. He resides at 1037 Fordham Lane, Woodmere, New York. When he resigned he withdrew his investment of approximately $600,000.

13. The defendant Cohen was Vice Chairman of the Board of Directors of Weis until approximately March, 1973 when he resigned and withdrew his investment of approximately $400,000. He resides at 1050 Fifth Avenue, New York, New York.

14. Defendant Hertzberg was at all times relevant hereto an executive vice president of Weis as well as a large shareholder. He resides at 535 Hazel Drive, Woodmere, New York.

15. The defendant Touche, Ross is a firm of certified public accountants with offices at 1633 Broadway, New York, New York 10019. Touche Ross at all times here relevant was independent auditor for Weis.

16. The defendants have engaged in certain acts and practices within the Southern District of New York and elsewhere in connection with and constituting the violations complained of herein.

17. At certain of the times relevant hereto, defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg, Cohen and Voisin, were persons controlling defendant Weis.

18. As a broker-dealer registered with the Commission,

Weis was subject to certain financial requirements including a requirement that it maintain a minimum ratio of aggregate indebtedness to net capital. Pursuant to Section 15(c) (3) of the Exchange Act 15 U.S.C. 78o(c)(3) and Rule 15c3-1(b) (2) thereunder, 17 C.F.R.240.15c3-1(b) (2), the defendant Weis was not subject to the Commission's net capital rule provided that it remained a member in good standing of a registered national securities exchange which imposes minimum net capital requirements upon its members. As a member of the New York Stock Exchange ("Exchange"), therefore, Weis was subject to that Exchange's net capital requirement (Rule 325). This rule was in effect at all times relevant hereto and requires, among other things, that a member's aggregate indebtedness not be greater than 15 times its net capital. According to the findings of New York Stock Exchange examiners, the net capital ratio of defendant Weis as at March 31, 1973 was 3,000% which meant that its aggregate indebtedness was 30 times its net capital.

19. From on or about April 1, 1971 to the time when it ceased to be operative, Weis experienced a deteriorating financial situation and declining income. During this period the defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg, Cohen and Voisin, aided and abetted by defendant Touche, Ross, have attempted through the use of false and misleading financial statements and documents and other devices, to induce and did induce subordinated lenders, creditors, stockholders and employees, including plaintiffs herein, to loan to, and invest money in and

acquire securities issued by defendant Weis. By means of the aforesaid course of conduct which included the falsification of Weis' books and records of account the defendants caused Weis to falsely represent its financial condition and the risk of leaving monies and/or securities invested or on deposit with, or in the custody of, the Weis firm. In connection with the aforesaid activities the defendants have submitted false and inaccurate financial reports to the Commission and the Exchange and have made or caused to be made countless false and misleading entries on the books and records of account of Weis. Defendants' course of conduct resulted in an overstatement of Weis' earnings and net worth as of May 26, 1973 to the extent of $2,000,000.

20. Each of the plaintiffs herein has purchased the securities of defendant Weis and/or lent money to the defendant Weis in the form of subordinated loans in the amounts indicated on Schedule "A" annexed hereto.

AS AND FOR A FIRST CAUSE OF ACTION

Violation of Sections 12(2), 15 and 17(a) of the Securities Act, 15 U.S.C. 771(2), 77o, 77q(a) and Sections 10(b), 17(a), 18 and 20 of the Exchange Act, 15 U.S.C. 78j (b) 78q (a), 78r and 78t; and Rule 17 C.F.R. 240.10b-5 thereunder -- (Fraud in connection with Securities Transactions)

21. The Plaintiffs repeat and reallege by reference each and every allegation set forth in paragraphs "1" through "20" hereof.

22. During the period from on or about April 1, 1971, to the date hereof, the defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg, Cohen and Voisin, aided and abetted by defendant Touche, Ross by use of the means and instrumentalities and/or

instruments of interstate commerce and of the mails, unlawfully, wilfully and recklessly in connection with the purchase and sale of securities, specifically the purchase and retention of the securities of Weis by Plaintiffs, as well as loans to, and investments in Weis, have conspired to and directly and indirectly have employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon plaintiffs for the purpose of inducing them to purchase and retain the securities of Weis. As part of the aforesaid conduct and activities, the defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg, Cohen and Voisin, aided and abetted by Touche, Ross, among other things, did:

(a) Fail to disclose to plaintiffs the grossly inaccurate and incomplete condition of the books and records of Weis and other violations of the federal securities laws, as more fully alleged by the Commission in its Complaint filed with this Court on May 24, 1973. The defendants had caused false and misleading bookkeeping entries to be made during February and March, 1973 as more particularly described in subparagraph (f) below and subsequently removed or destroyed such bogus journal entries resulting in a failure to preserve

records as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-4 thereunder. Other underlying source documents were either lost or destroyed in the spring of 1973 making it extremely difficult for the New York Stock Exchange and the Commission to ascertain Weis' true financial condition. As a direct result of the foregoing activities, throughout the violative period, Weis' books did not reveal its true financial condition and that fact was not made known to plaintiffs.

(b) Fail to disclose to plaintiffs that Weis was not in compliance with the requirements of the net capital rule to which it was subject. That rule, Rule 325 of the New York Stock Exchange Rules and Regulations requires a member firm to maintain a ratio of aggregate indebtedness to net capital of no greater than 1500%. On May 1, 1973 at the culmination of the defendants' fraudulent course of conduct, the Commission received information that Weis' net capital ratio as at March 31, 1973 was 1900%. On May 22, 1973 the examiners of the New York Stock Exchange determined that the correct ratio at March 31, 1973 was 3000%. This dramatic increase resulted from the reversal of false and misleading entries on Weis' books designed to camouflage the truth.

(c) Induce, by the use of false and misleading financial statements including, but not limited to the "Report on Examination of Consolidated Financial Statements" of Weis for the five years ended May 26, 1972, as well as material verbal misrepresentations and omissions employees of Weis, including plaintiffs herein to lend money to, and invest money in and purchase securities issued by defendant Weis;

(d) Cause the preparation of, prepare, issue, disseminate and publish financial statements, reports and advices, written and oral, or aid and abet the foregoing, which, among other things, reflected false, inaccurate and inflated income and net worth values, falsely understated liabilities, the concealment of losses actually suffered and overstated valuations of securities held in Weis' proprietary account. Such reports include but are not limited to the "Report on Examination of Consolidated Financial Statements" of Weis for the five years ended May 26, 1972; the Form X-17A-5 report of financial condition filed with the Commission by Weis on July 11, 1972 purporting to reflect Weis' true financial condition as at May 26, 1972, which overstated Weis' earnings and net worth by approximately $1,200,000; Joint

Regulatory Reports filed by Weis as required with the New York Stock Exchange; Weis' profit and loss statement for its fiscal year ending May 26, 1972 which reported earnings of $1.3 million when in fact Weis had suffered losses exceeding $1.5 million; Balance sheets of Weis for November, 1972 and February, 1973.

(e) Fail to disclose that they had caused to be filed with the Commission and the New York and American Stock Exchanges false financial reports including a false SEC X 17A-5 Report and false Joint Regulatory Reports. The Commission has determined that the Joint Regulatory Reports filed by Weis with the New York Stock Exchange for at least the months of January, February and March, 1973 were grossly inaccurate. The Form X 17A-5 Report purporting to reflect Weis' condition as at May 26, 1972 was false and misleading in the following respects:

(i) Statements of the valuation of securities held in proprietary accounts were falsely inflated.

(ii) Statement of retained earnings was falsely inflated by approximately $2,500,000.

(iii) Statement of leasehold improvement falsely overstated by at least $325,000.

(iv) Statement of commissions receivable on

the last five trade dates falsely inflated.

(v) Statement of insurance claim receivable re: Winslow, Cohue and Stetson and income falsely inflated by at least $500,000.

(vi) Statement of Sheiman, Hochstein & Trotta liquidation omnibus account and income falsely overstated by at least $625,000.

(vii) Statement of liabilities falsely understated by failure to report substantial liabilities.

(viii) Various and sundry asset and income items falsely inflated.

(f) Falsify Weis' books and records of account required to be kept by is pursuant to Section 17 of the Securities Exchange Act of 1934 by various means, including the causing of false entries to be made on said books and records which tended to convey the false appearance of financial well being and compliance with Rule 325 of the New York Stock Exchange as follows:

(i) On April 28, 1972 a bookkeeping entry was made whereby a Reserve for Unsecured Accounts was decreased (debited) for approximately $625,000 and two separate income accounts were increased (credited). The net effect of this entry, which had no valid basis or

justification, was to falsely increase the current earnings and net worth of defendant Weis.

(ii) On May 24, 1972 a bookkeeping entry was made whereby an asset account titled Insurance Claim Receivable was increased (debited) $500,000 and eleven separate income accounts were correspondingly increased (credited). There was no basis or justification for this entry which had the effect of falsely inflating defendant Weis' current earnings and net worth.

(iii) On or about the 26th day of May, 1972, two checks were caused to be issued, one for $125,735.25 to Arlen Properties and the second for $200,000 to 17 Battery Place Associates, which amounts were recorded on Weis' books and records as a payment against liabilities. The former check was redeposited in Weis' bank account and the latter check exchanged with a check of an associate of one of the defendants, and the proceeds of both checks were fraudulently credited to Weis' income, thereby falsely inflating Weis' profit by more than $325,000.

(iv) On or about the 25th day of May, 1972, certain of the defendants fraudulently inflated and caused to be fraudulently

inflated, the valuations of securities held in Weis' proprietary account as of said date, thereby falsely inflating unrealized gains to Weis in the approximate amount of $250,000.

(v) On May 30, 1972, bookkeeping entries were made whereby several commission income accounts in the general ledger were credited in the amount of approximately $85,000 to reflect commissions earned on securities transactions effected on May 23, 1972. The entries in the commission income accounts were based on a daily summary of commissions earned by defendant Weis from securities transactions effected on various exchanges and in the over-the-counter market. The original and accurate summary of commissions earned on May 30, 1972 reflecting commissions of approximately $45,000 was replaced with an incorrect summary reflecting commissions of approximately $90,000. This incorrect summary reflecting earned commissions of approximately $90,000 was then utilized as the source document for the incorrect entries in the general ledger. As a result of these incorrect entries alone, the current earnings and net worth of defendant Weis were overstated by approximately $45,000.

(vi) In or about January, 1973, certain of the defendants caused false entries to be made on the books and records of Weis reflecting a proprietary position in Pan American 4 1/2% bonds to mature in 1984, when in fact Weis' position was in similar bonds but with a substantially lower value, which fraudulent entries falsely inflated Weis' unrealized gains by approximately $200,000.

(vii) On February 6, 1973 a bookkeeping entry was made whereby a liability account titled, Bank Loans Payable, was decreased (debited) in the amount of $1,500,000 and several different income accounts were increased (credited). However, this entry was made without any valid basis or justification in that the bank loan obligation was not, in fact, reduced by $1,500,000. As a result of this "bogus" entry, the current earnings net worth and net capital of defendant Weis were falsely inflated.

(viii) On March 22, 1973 a bookkeeping entry was effected whereby the liability account, Bank Loans Payable, was decreased (debited) in the amount of $2,000,000 and several income accounts were increased (credited). The net effect of this entry, again made without any valid basis therefor, was to unjustifiably

increase the current earnings, net worth and net capital of defendant Weis.

(ix) For a period well in excess of one year, up to and including March 30, 1973, defendant Weis failed to make payments of $41,000 per month pursuant to a leasehold agreement for offices at 111 Broadway, New York, New York. However, defendant Weis failed to establish a liability account on its books and records to reflect the monthly obligation which was accruing and by March 30, 1973 totalled approximately $700,000.

(g) Cause Weis to fail to notify the Commission as required by Section 17(a) of the Exchange Act, 15 U.S.C. 78q(a) and Rule 17 C.F.R. 240.17a-11 thereunder of its failure to maintain current and accurate books and records, and caused Weis to fail to file with the Commission a financial report as required by said rule as well as a report detailing what corrective measures were taken to rectify Weis' faulty records; and

(h) Employ the foregoing tactics for the purpose of inducing purchase and retention of Weis' securities including the aforesaid loans and advances by plaintiffs, and in the case of defendants Cohen and Voisin, to enable said defendants to withdraw their substantial investments without alerting plaintiffs.

In performance of the acts and practices set out in this paragraph, said defendants' conduct was wilful and knowing and to the extent that said defendants lack actual knowledge of each and every aspect of the fraud, their failure to discover and disclose to plaintiffs herein Weis' true financial condition and the material misrepresentations and omissions made by Weis and its management was a failure to discharge a fiduciary duty and evinced a reckless disregard for the truth and that is the equivalent of actual knowledge and tantamount to wilfulness.

23. Plaintiffs, in connection with their purchases of the securities (including subordinated loans) of Weis, relied to their detriment and loss upon the representations, statements, material omissions, advices and reports prepared, issued, published and otherwise disseminated by the defendants, each of whom knew or should have known the materially false and misleading nature thereof.

24. Defendant Touche Ross & Co. as independent auditor for Weis conducted audits of Weis, certified its financial statements and completed its financial questionnaires and reports for submission to the Exchange and the Commission. In performing these functions during the period covered by the violative conduct alleged above and herein, defendant Touche Ross & Co. aided and abetted the violations of the other defendants in that it failed to apply and recklessly disregarded generally accepted accounting procedures designed to fairly present the financial status and condition of Weis, and its duties as independent public accountants. Reasonable audits would have revealed the true state of

Weis' financial condition and the false and misleading nature of many entries on Weis' books and records. As part of defendant Touche, Ross' alleged violative conduct, said defendant:

(a) Failed to make direct confirmation of Weis' accounts receivable and in particular of Weis' unsecured account; failed to obtain positive confirmation thereof; failed to examine related supporting evidence for such receivables; failed to determine the collectability of such receivables, and in particular the collectability of the accounts of Weis; and otherwise generally failed to verify the debit made on or about April 28, 1972 to the account entitled "Reserve For Unsecured Accounts" and the corresponding credit to income accounts, amounting to $625,000.

(b) Failed to obtain positive confirmation of an alleged insurance claim receivable in the amount of $500,000 entered on the books of Weis on or about May 24, 1972; failed otherwise to confirm said receivable by direct communication with the alleged insurance company; failed to determine the collectability of said alleged receivable and otherwise generally failed to employ auditing procedures sufficiently comprehensive to enable it to form an opinion as to the authenticity and probable collectability of such receivable.

(c) Failed to determine the nature of the offsetting checks and deposits of $125,735.25 and $200,000.00 made on and after May 26, 1972; failed to request clarification from the banks of Weis with respect to said offsetting checks and deposits; and otherwise failed to

confirm the consideration for and propriety of the issurance of said checks.

(d) Failed to satisfactorily confirm that the value of securities held in Weis' proprietary account as of May 26, 1972 was fairly stated; failed to confirm the propriety of the basis for valuation of such securities selected by Weis; failed to obtain direct confirmation of the price or value of such securities from sources other than Weis; failed to inquire into the basis for appraisals of the value of such securities by Weis' management and to satisfy itself as to the reasonableness thereof; and otherwise failed to determine that the basis at which the said securities were carried on the books of Weis was in accordance with generally accepted accounting principles.

(e) Failed to properly count and verify ownership of the marketable securities of Weis and in particular of certain Pan American 4-1/2% bonds maturing in 1984; failed to determine the location of the aforesaid bond; failed to confirm the ownership of said bonds with the person by whom same were held; failed to examine said bonds to determine the interest rate and maturity date thereof; and otherwise failed to determine that such marketable securities were owned by Weis.

(f) Failed to obtain from certain banks which were creditors of Weis written confirmation of the amount of certain loans payable by Weis to said banks, and in particular to confirm that said amounts payable reflected pay-

ments by Weis on or about February 6, 1973 and March 22, 1973, of the amounts of $1,500,000 and $2,000,000 respectively; failed to obtain from said banks a statement of direct and indirect obligations of Weis; failed to obtain separate confirmations from said banks of loans payable by Weis to said banks; failed to examine any cancelled notes of Weis payable to such banks; and otherwise failed to determine that all material liabilities of Weis, and in particular bank loan liabilities, were included in the accounts of Weis in reasonably accurate amounts, and thereby failed to confirm the corresponding credits to the income accounts of Weis;

(g) Failed to determine the existence of the liability for rents pursuant to a leasehold agreement for offices at 111 Broadway, New York, New York; failed to examine the lease to said premises and determine compliance by Weis with the terms thereof; failed to substantiate rent expenses claimed by Weis; failed to discover the absence of rental payments for said premises on the books of account of Weis; and otherwise failed to determine the status of the said lease and of the rental payments required to be made thereunder.

(h) Failed generally and in diverse other ways to properly audit and present fairly the operating results of Weis and the income, earnings, assets, net worth, capital and financial condition of Weis in the statements, questionnaires and reports of Weis certified by Defendant Touche Ross.

25. The Commission's complaint referred to in paragraph "6" herein charged that Weis and defendants Levine, Leit, Solomon, Kubie and Lynn "made or caused to be made countless false and misleading entries on the books and records" of Weis, certain of which are specified in paragraph 22(F) above, and which culminated in an overstatement of Weis' earnings and net worth as of May 26, 1972 of approximately $2,000,000.

26. Plaintiffs were not aware and could not reasonably have been expected to be aware of the aforesaid fraudulent acts, practices and course of conduct prior to approximately April or May, 1973 and the defendants knew or should have known that persons who were investing in, or lending money to Weis would and did rely upon Weis' financial statements and reports embodying such statements.

27. Plaintiffs would not have invested in Weis had they been in the possession of the true facts referable to Weis' deteriorating financial condition and declining income. A court-appointed trustee is now liquidating Weis pursuant to Court Order and the Securities Investor Protection Act of 1970 (pub. L. No. 91-598, December 30, 1970) with the result that the securities purchased by Plaintiffs will be greatly diminished in value and possibly worthless.

28. By reason of the activities described in paragraphs "21" through "26" herein, which activities are the subject of the Commission's complaint which named certain of the defendants herein, the defendants violated the provisions of the federal securities laws enumerated in paragraph "1" herein, which

violations proximately caused and directly or indirectly caused and gave rise to substantial damages sustained by the plaintiffs.

AS AND FOR A SECOND CAUSE OF ACTION

Breach of Fiduciary Obligations and Fraud

29. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "27" hereof.

30. The defendants Weis, Levine, Leit, Solomon, Kubie, Lynn Cohen, Hertzberg, Voisin and Touche Ross & Co., individually and acting in concert, have breached their fiduciary obligations towards, and have perpetrated a fraud upon plaintiffs in that their activities, course of conduct, devices, schemes, statements and omissions of material facts constituted misrepresentations known by these defendants to be false, knowingly made by the defendants to the plaintiffs, on which a reasonable man would rely and upon which plaintiffs did rely, as a result of which plaintiffs sustained substantial damages.

AS AND FOR A THIRD CAUSE OF ACTION

Violation of Rule 325 of the Rules of the New York Stock Exchange

31. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "27" and "29" hereof.

32. Defendants caused Weis to continue to conduct its business to the detriment of plaintiffs herein while and at a time when it was not in compliance with Rule 325 of The Rules of the New York Stock Exchange which provides that the ratio of a members's aggregate indebtedness to net capital not exceed 1500%

and failed to disclose to plaintiffs that Weis was not in compliance with such minimum net capital rule to which it was subject as a result of which plaintiffs sustained substantial damages.

WHEREFORE, Plaintiffs demand judgment:

A. Requiring defendants, jointly and severally, to compensate each plaintiff for the loss each has sustained as a result of the wrongs alleged above and herein.

B. Awarding Plaintiffs the cost and expenses of this action, including reasonable counsel fees.

C. Granting such other and further relief as may be just and proper.

Dated: January 31, 1975

FEINER CURTIS SMITH AND GOLDMAN

By S/BARRY C. FEINER
A Member of the Firm
Attorneys for Plaintiff
919 Third Avenue
New York, New York 10022
(212) EL 5-2300

EXHIBIT 9 TO AFFIDAVIT OF ARNOLD I. ROTH.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

GEORGE P. GOVATOS, SR.

Plaintiff,

-against-

74 Civil 2832
(I.B.W.)

WEIS SECURITIES, INC., ARTHUR LEVINE, SOL LEIT, ALAN SOLOMON, JOEL KUBIE, ROBERT LYNN, TOUCHE ROSS & CO., JAMES COHEN, and SIDNEY HERTZBERG,

Defendants.

----------X

AMENDED COMPLAINT

IRWIN S. BARSHACK,

Plaintiff.

-against-

74 Civil 2833
(I.B.W.)

WEIS SECURITIES, INC., ARTHUR LEVINE, SOL LEIT, ALAN SOLOMON, JOEL KUBIE, ROBERT LYNN, TOUCHE ROSS & CO., JAMES COHEN, and SIDNEY HERTZBERG,

Defendants.

----------X

Plaintiffs, by their undersigned attorneys, complaining of the Defendants, respectfully allege upon information and belief:

1. Plaintiffs bring this action to recover money damages suffered as a proximate result of the fraudulent acts and practices in which the Defendants Weis Securities, Inc. ("Weis"), Arthur Levine ("Levine"), Sol Leit ("Leit"), Alan Solomon ("Solomon"), Joel Kubie ("Kubie"), Robert Lynn ("Lynn"), Sidney Hertzberg ("Hertzberg"), James Cohen ("Cohen"), and Touche Ross & Co. ("Touche Ross") have engaged which constitute violations of Section 12 (2), 15 and 17 (a) of the Securities Act of 1933 ("Securities Act") 15 U.S.C. 77 1 (2), 77o and 77q (a), Sections 10 (b), 17 (a), 18 and 20 of the Securities Exchange Act of 1934 ("Exchange Act"),

as amended, 15 U.S.C. 78j (b), 78q (a), 78r and 78t; and Rule 17 C.F.R. 240.10b-5, thereunder.

2. This Court has jurisdiction of this action pursuant to Section 27 of the Exchange Act, 15 U.S.C. 78 aa and Section 22 (a) of the Securities Act, 15 U.S.C. 77v (a) and the principles of pendant jurisdiction.

3. The United States Securities and Exchange Commission ("Commission"), pursuant to the authority contained in Sections 10 (b), 15 (c) (3), 17 (a) and 23 (a) of the Exchange Act, 15 U.S.C. 78j (b), 78 (c) (3), 78q (a) and 78w (a), has prescribed for the protection of investors and in the public interest Rules 17 C.F.R. 240.10b-5, 15c3-3, 17a-3, 17a-4, 17a-5 and 17a-11 under said Act which are now and at all times herein relevant were in effect.

4. The Plaintiffs were each formerly employed by Weis Securities Inc., ("Weis"), formerly known as Weis, Voisin & Co., Inc., and are each Weis shareholders.

5. Defendant Weis was, at all times relevant hereto, a broker-dealer registered with the Commission pursuant to Section 15 (b) of the Exchange Act, 15 U.S.C. 78n(b). It was a member of the New York Stock Exchange, Inc., the American Stock Exchange and other national stock exchanges as well as a member of the National Association of Securities Dealers, Inc., and maintained an office and principal place of business at 17 Battery Place North, New York, New York.

6. On May 24, 1973, the Commission commenced an action in this Court seeking injunctive relief and the appointment of a temporary receiver (73 Civ. 2332). The relief sought by the Commission has been granted and Weis' assets are presently being liquidated by a trustee.

7. The Defendant Levine is the former Chairman of the Board of Directors, Chief Executive Officer, and was a substantial shareholder of Weis. He resides at 985 Fifth Avenue, New York, New York.

8. The Defendant Leit was President, a director, and is a substantial shareholder of Defendant Weis, and as its chief operating officer had and exercised primary responsibility for the day-to-day operations of Weis, including the preparation and maintenance of books and records of account. He resides at 25 Sutton Place South, New York, New York.

9. The Defendant Solomon was Treasurer, director, and is a shareholder of Defendant Weis. Solomon, as Treasurer, was the chief financial officer of Weis and responsible for signing financial reports and statements of financial condition prepared, disseminated and supplied by Weis and submitted or filed with various regulatory and self-regulatory bodies including the New York Stock Exchange, the American Stock Exchange and the United States Securities and Exchange Commission. He resides at 350 Evansdale Road, Scarsdale, New York.

10. The Defendant Kubie was, until April 8, 1973, the Comptroller, executive vice president, director and is a shareholder of Defendant Weis. Kubie as Comptroller, had responsibility for the accounting and related departments of Weis. He resides at 1 21 Sunnyfield Drive, Linden, New Jersey.

11. The Defendant Lynn was the assistant comptroller, a vice president and is a shareholder of Weis. For a brief period following April 8, 1973, Lynn became comptroller. He resides at 7 Kelso Place, Englishtown, New Jersey.

12. The Defendant Cohen was Vice Chairman of the Board of Directors of Weis until approximately March 1973, and was a

substantial shareholder of Weis during a significant portion of the relevant period. He resides at 1050 Fifth Avenue, New York, New York.

13. Defendant Hertzberg was, at relevant times, Executive Committee Chairman, Executive Vice President, and a large shareholder. He resides at 535 Hazel Drive, Woodmere, New York.

14. The Defendant Touche Ross is a firm of certified public accountants with offices at 1633 Broadway, New York, New York 10019. Touche Ross at all times here relevant was the independent auditor for Weis.

15. The Defendants have engaged in certain acts and practices within the Southern District of New York and elsewhere in connection with and constituting the violations complained of herein.

16. At certain of the times relevant hereto, Defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg and Cohen were persons controlling Defendant Weis.

17. As a broker-dealer registered with the Commission, Weis was subject to certain financial requirements including a requirement that it maintain a minimum ratio of aggregate indebtedness to net capital. Pursuant to Section 15 (c) (3) of the Exchange Act 15 U.S.C. 78o (c) (3) and Rule 15c3-1 (b) (2) thereunder, 17 C.F.R. 240.15c3-1 (b) (2), the Defendant Weis was not subject to the Commission's net capital rule provided that it remained a member in good standing of a registered national securities exchange which imposes minimum net capital requirements upon its members. As a member of the New York Stock Exchange ("Exchange"), therefore, Weis was subject to that Exchange's net capital requirement (Rule 325). This rule was in effect at all times relevant hereto and requires, among other things, that a member's aggregate indebted-

ness not be greater than 15 times its net capital. According to the findings of the New York Stock Exchange Examiner the net capital ratio of Defendant Weis as at March 31, 1973 was 3,000%, which meant that its aggregate indebtedness was 30 times its net capital.

18. From on or about April 1, 1971 to the time when it ceased to be operative, Weis experienced a deteriorating financial situation and declining income. During this period the Defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg and Cohen, aided and abetted by Defendant Touche Ross, have attempted through the use of false and misleading financial statements and documents and other devices, to induce and did induce stockholders and employees, including Plaintiffs herein, to invest money in and acquire securities issued by Defendant Weis. By means of the aforesaid course of conduct which included the falsification of Weis' books and records of account the Defendants caused Weis to falsely represent its financial condition and the risk of leaving monies and/or securities invested or on deposit with, or in the custody of, the Weis firm. In connection with the aforesaid activities the Defendants have submitted false and inaccurate financial reports to the Commission and the Exchange and have made or caused to be made countless false and misleading entries on the books and records of account of Weis. Defendants course of conduct resulted in an overstatement of Weis' earnings and net worth as of May 26, 1972 to the extent of $2,000,000.

19. The Plaintiffs herein have purchased the following securities of Defendant Weis on the dates shown at $25.00 per share:

PLAINTIFF	SHARES	DATE
Govatos	1,000 shares voting stock	October 1972
Govatos	1,000 shares non-voting stock	October 1972
Barshack	500 shares voting stock	January 1972
Barshack	1,000 shares non-voting stock	October 1972

AS AND FOR A FIRST CAUSE OF ACTION

Violation of Sections 12 (2), 15 and 17 (a) of the Securities Act, 15 U.S . 77 l (2), 77o, 77q, (a) and Sections 10 (b), 17 (a), 18 and 20 of the Exchange Act, 15 U.S.C. 78j (b) 78q (a), 78r and 78t; and Rule 17 C.F.R. 240.10b-5 thereunder--
(Fraud in connection with Securities Transactions)

20. The Plaintiffs repeat and reallege by reference each and every allegation set forth in paragraphs "1" through "19" hereof.

21. During the period from on or about January 1, 1971 to the date hereof, the Defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg and Cohen, aided and abetted by Defendant Touche Ross, by use of the means and instrumentalities and/or instruments of interstate commerce and of the mails, unlawfully, wilfully and recklessly in connection with the purchase and sale of securities, specifically the purchase and retention of the securities of Weis by Plaintiffs have conspired to and directly and indirectly have employed devices, schemes and artifices to defraud, made untrue statements of material facts and omitted to state material facts necessary to make the statements made, in the light of the circumstances under which they were made, not misleading and engaged in acts, practices and a course of business which operated as a fraud and deceit upon Plaintiffs for the purpose of inducing them to purchase and retain the securities of Weis. As part of the aforesaid conduct and activities of the Defendants Levine, Leit, Solomon, Kubie, Lynn, Hertzberg and Cohen, aided and abetted by Defendant Touche Ross, among other things, did:

(a) Fail to disclose to Plaintiffs the grossly inaccurate and incomplete condition of the books and records of Weis and other violations of the federal securities laws, as more fully alleged by the Commission in its

Complaint filed with this Court on May 24, 1973. The Defendants had caused false and misleading bookkeeping entries to be made during February and March 1973 as more particularly described in subparagraph (f) below and subsequently removed and destroyed such bogus journal entries resulting in a failure to preserve records as required by Section 17 (a) of the Exchange Act, 15 U.S.C. 78q (a) and Rule 17 C.F.R. 240.17a-4 thereunder. Other underlying source documents were either lost or destroyed in the spring of 1973 making it extremely difficult for the New York Stock Exchange and the Commission to ascertain Weis' true financial condition. As a direct result of the foregoing activities, throughout the violative period, Weis' books did not reveal its true financial condition and that fact was not made known to Plaintiffs.

(b) Fail to disclose to Plaintiffs that Weis was not in compliance with the requirements of the net capital rule to which it was subject;

(c) Induce, by the use of false and misleading financial statements including, but not limited to the "Report on Examination of Consolidated Financial Statements" of Weis for the five years ended May 26, 1972, as well as material verbal misrepresentations and omissions, employees of Weis, including Plaintiffs herein to invest money in and purchase securities issued by Defendant Weis;

(d) Cause the preparation of, prepare, issue, disseminate and publish financial statements, reports and advices, written and oral, or aid and abet the foregoing, which,

among other things, reflected false, inaccurate and inflated income and net worth values, falsely understated liabilities, the concealment of losses actually suffered and overstated valuations of securities held in Weis' proprietary account. Such reports include but are not limited to the "Report on Examination of Consolidated Financial Statements" of Weis for the five years ended May 26, 1972; the Form X-17A-5 report of financial condition filed with the Commission by Weis on July 11, 1972, which overstated Weis' earnings and net worth by approximately $1,200,000; Joint Regulatory Reports filed by Weis as required with the New York Stock Exchange; Weis' profit and loss statement for its fiscal year ending May 26, 1972 which reported earnings of $1.3 million when in fact Weis had suffered losses exceeding $1.5 million; balance sheets of Weis for November 1972 and February 1973;

(e) Fail to disclose that they had caused to be filed with the Commission and the New York and American Stock Exchanges false financial reports including a false SEC X 17A-5 Report and false Joint Regulatory Reports. The Commission has determined that the Joint Regulatory Reports filed by Weis with the New York Stock Exchange for at least the months of January, February and March 1973 were grossly inaccurate. The Form X 17A-5 Report purporting to reflect Weis' condition as at May 26, 1972 was false and misleading in the following respects:

(i) Statements of the valuation of securities held

in proprietary accounts were falsely inflated.

(ii) Statement of retained earnings was falsely inflated by approximately $2,500,000.

(iii) Statement of leasehold improvement falsely overstated by at least $325,000.

(iv) Statement of commissions receivable on the last five trade dates falsely inflated.

(v) Statement of insurance claim receivable re: Winslow, Cohue and Stetson and income falsely inflated by at least $500,000.

(vi) Statement of Sheiman, Hochstein & Trotta liquidation omnibus account and income falsely overstated by at least $625,000.

(vii) Statement of liabilities falsely understated by failure to report substantial liabilities.

(viii) Various and sundry assets and income items falsely inflated.

(f) Falsify Weis' books and records of account required to be kept by Weis pursuant to Section 17 of the Securities Exchange Act of 1934 by various means, including the causing of false entries to be made on said books and records which tended to convey the false appearance of financial well-being and compliance with Rule 325 of the New York Stock Exchange as follows:

(i) On April 28, 1972 a bookkeeping entry was made whereby a Reserve for Unsecured Accounts was decreased (debited) for approximately $625,000 and two separate income accounts were increased (credited). The net effect of this entry, which had no valid basis or justification, was to

falsely increase the current earnings and net worth of Defendant Weis.

(ii) On May 24, 1972 a bookkeeping entry was made whereby an asset account titled Insurance Claim Receivable was increased (debited) $500,000 and eleven separate income accounts were correspondingly increased (credited). There was no basis or justification for this entry which had the effect of falsely inflating Defendant Weis' current earnings and net worth.

(iii) On or about the 25th day of May, 1972 two checks were caused to be issued, one for $125,735.25 to Arlen Properties and the second for $200,000 to 17 Battery Place Associates, which amounts were recorded on Weis' books and records as a payment against liabilities. The former check was redeposited in Weis' bank account and the latter check exchanged with a check of an associate of one of the Defendants, and the proceeds of both checks were fraudulently credited to Weis' income, thereby falsely inflating Weis' profit by more than $325,000.

(iv) On or about the 26th day of May 1972, certain of the Defendants fraudulently inflated and caused to be fraudulently inflated, the valuation of securities held in Weis' proprietary account as of said date, thereby falsely inflating unrealized gains to Weis in the approximate amount of $250,000.

(v) On May 30, 1972, bookkeeping entries were made whereby several commission income accounts in the general ledger were credited to reflect commissions earned on securities transactions effected on May 23, 1972. The entries in the commission income accounts were based on a daily summary of commissions earned by Defendant Weis from securities transactions effected on various exchanges and in the over-the-counter market. The original and accurate summary of commissions earned on May 30, 1972 reflecting commissions of approximately $45,000 was replaced with an incorrect summary reflecting commissions of approximately $90,000. This incorrect summary reflecting earned commissions of approximately $90,000 was then utilized as the source document for the incorrect entries in the general ledger. As a result of these incorrect entries alone, the current earnings and net worth of Defendant Weis were over stated by approximately $45,000.

(vi) In or about January 1973, certain of the Defendants caused false entries to be made on the books and records of Weis reflecting a proprietary position in Pan American 4-1/2% bonds to mature in 1984, when in fact Weis' position was in similar bonds but with a substantially lower value, which fraudulent entries falsely inflated Weis' unrealized gains by approximately $200,000.

(vii) On February 6, 1973 a bookkeeping entry was made whereby a liability account titled Bank Loans

Payable was decreased (debited) in the amount of $1,500,000 and several different income accounts were increased (credited). However, this entry was made without any valid basis or justification in that the bank loan obligation was not, in fact, reduced by $1,500,000. As a result of this "bogus" entry the current earnings net worth and net capital of Defendant Weis were falsely inflated.

(viii) On March 22, 1973 a bookkeeping entry was effected whereby the liability account, Bank Loans Payable, was decreased (debited) in the amount of $2,000,000 and several income accounts were increased (credited). The net effect of this entry, again made without any valid basis therefor, was to unjustifiably increase the current earnings net worth and net capital of Defendant Weis.

(ix) For a period well in excess of one year, up to and including March 30, 1973 Defendant Weis failed to make payments of $41,000 per month pursuant to a leasehold agreement for offices at 111 Broadway, New York, New York. However, Defendant Weis failed to establish a liability account on its books and records to reflect the monthly obligation which was accruing and by March 30, 1973 totalled approximately $700,000.

(g) Cause Weis to fail to notify the Commission as required by Section 17 (a) of the Exchange Act 15 U.S.C. 78q (a) and Rule 17 C.F.R. 240.17A-11 thereunder of its failure

to maintain correct and accurate books and records, and caused Weis to fail to file with the Commission a financial report as required by said rule as well as a report detailing what corrective measures were taken to rectify Weis' faulty records; and

(h) Employ the foregoing tactics for the purpose of inducing purchase and retention of Weis' securities including the aforesaid purchases by Plaintiffs.

22. Plaintiffs, in connection with their purchase of the securities of Weis, relied to their detriment and loss upon the representations, statements, material omissions, advices and reports prepared, issued, published and otherwise disseminated by Defendants, each of whom knew or should have known the materially false and misleading nature thereof.

23. Defendant Touche Ross & Co., as independent auditor for Weis conducted audits of Weis, certified the financial statements of Weis, and completed Weis' financial questionnaires and reports for submission to the Securities and Exchange Commission. In performing these functions during the period covered by the conduct alleged above and herein, Defendant Touche Ross & Co. aided and abetted the other Defendants herein by failing to apply and recklessly disregarding generally accepted accounting and auditing procedures designed to fairly determine and present the financial status and condition of Weis. As part of the failure of Defendant Touche Ross to apply said generally accepted accounting and auditing procedures, said Defendant:

(a) Failed to make direct confirmation of Weis' accounts receivable and in particular of Weis' unsecured account; failed to obtain positive confirmation thereof;

failed to examine related supporting evidence for such receivables; failed to determine the collectability of such receivables, and in particular the collectability of the accounts of Weis; and otherwise generally failed to verify the debit made on or about April 28, 1972 to the account entitled "Reserve For Unsecured Accounts" and the corresponding credit to income accounts, amounting to $625,000.

(b) Failed to obtain positive confirmation of an alleged insurance claim receivable in the amount of $500,000 entered on the books of Weis on or about May 24, 1972; failed otherwise to confirm said receivable by direct communication with the alleged insurance company; failed to determine the collectability of said alleged receivable and otherwise generally failed to employ auditing procedures sufficiently comprehensive to enable it to form an opinion as to the authenticity and probably collectability of such receivable.

(c) Failed to determine the nature of the offsetting checks and deposits of $125,735.25 and $200,000.00 made on and after May 26, 1972; failed to request clarification from the banks of Weis with respect to said offsetting checks and deposits; and otherwise failed to confirm the consideration for and propriety of the issuance of said checks.

(d) Failed to satisfactorily confirm that the value of securities held in Weis' proprietary account as of May 26, 1972 was fairly stated; failed to confirm the propriety of the basis for valuation of such securities selected by Weis; failed to obtain direct confirmation of the price or value of such securities from sources

other than Weis; failed to inquire into the basis for appraisals of the value of such securities by Weis' management and to satisfy itself as to the reasonableness thereof; and otherwise failed to determine that the basis at which the said securities were carried on the books of Weis was in accordance with generally accepted accounting principles.

(e) Failed to properly count and verify ownership of the marketable securities of Weis and in particular of certain Pan American 4-1/2% bonds maturing in 1984; failed to determine the location of the aforesaid bond; failed to confirm the ownership of said bonds with the person by whom same were held; failed to examine said bonds to determine the interest rate and maturity date thereof; and otherwise failed to determine that such marketable securities were owned by Weis.

(f) Failed to obtain from certain banks which were creditors of Weis written confirmation of the amount of certain loans payable by Weis to said banks, and in particular to confirm that said amounts payable reflected payments by Weis on or about February 6, 1973 and March 22, 1973, of the amounts of $1,500,000 and $2,000,000 respectively; failed to obtain from said banks a statement of direct and indirect obligations of Weis; failed to obtain separate confirmations from said banks of loans payable by Weis to said banks; failed to examine any cancelled notes of Weis payable to such banks; and otherwise failed to determine that all material liabilities of Weis, and in particular bank

loan liabilities, were included in the accounts of Weis in reasonably accurate amounts, and thereby failed to confirm the corresponding credits to the income accounts of Weis;

(g) Failed to determine the existence of the liability for rents pursuant to a leasehold agreement for offices at 111 Broadway, New York, New York; failed to examine the lease to said premises and determine compliance by Weis with the terms thereof; failed to substantiate rent expenses claimed by Weis; failed to discover the absence of rental payments for said premises on the books of account of Weis; and otherwise failed to determine the status of the said lease and of the rental payments required to be made thereunder.

(h) Failed generally and in diverse other ways to properly audit and present fairly the operating results of Weis and the income, earnings, assets, net worth, capital and financial condition of Weis in the statements, questionnaires and reports of Weis certified or completed by Defendant Touche Ross.

24. The Commission's complaint referred to in paragraph "6" herein charged that Weis and Defendants Levine, Leit, Solomon, Kubie, and Lynn "made or caused to be made countless false and misleading entries on the books and records" of Weis which culminated in an overstatement of Weis' earnings and net worth as of May 26, 1972 of approximately $2,000,000.

25. Plaintiffs were not aware and could not reasonably have been expected to be aware of the aforesaid fraudulent acts, practices and course of conduct prior to approximately April or May 1973, and the Defendants knew or should have known that persons

who were investing in Weis would and did rely upon Weis' financial statements and reports embodying such statements.

26. Plaintiffs would not have invested in Weis had they been in the possession of the true facts referable to Weis' deteriorating financial condition and declining income. A court-appointed trustee is now liquidating Weis pursuant to Court Order and the Securities Investor Protection Act of 1970 (pub. L. No. 91-598, December 30, 1970) with the result that the securities purchased by Plaintiffs will be greatly diminished in value and possibly worthless.

27. By reason of the activities described in paragraphs "20" through "25" herein, which activities are the subject of the Commission's complaint which named certain of the Defendants herein, the Defendants violated the provisions of the federal securities laws enumerated in paragraph "1" herein, which violations proximately caused and directly or indirectly caused and gave rise to substantial damages sustained by the Plaintiffs.

AS AND FOR A SECOND CAUSE OF ACTION

Breach of Fiduciary Obligations and Fraud

28. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "26" hereof.

29. The Defendants Weis, Levine, Leit, Solomon, Kubie, Lynn, Cohen, Hertzberg and Touche Ross & Co., individually and acting in concert, have breached their fiduciary obligations towards, and have perpetrated a fraud upon Plaintiffs in that their activities, courses of conduct, devices, schemes, statements and omissions of material facts constituted misrepresentations which said Defendants knew or should have known to be false, which were knowingly made by the Defendants to the Plaintiffs, and on which

a reasonable man would rely and upon which Plaintiffs did rely, as a result of which Plaintiffs sustained substantial damages.

AS AND FOR A THIRD CAUSE OF ACTION

Violation of Rule 325 of the Rules of the New York Stock Exchange

30. Plaintiffs repeat and reallege each and every allegation contained in paragraphs "1" through "26" and "29" hereof.

31. Defendants caused Weis to continue to conduct its business to the detriment of Plaintiffs herein while and at a time when it was not in compliance with Rule 325 of the Rules of the New York Stock Exchange and failed to disclose to Plaintiffs that Weis was not in compliance with such minimum net capital rule to which it was subject, as a result of which Plaintiffs sustained substantial damages.

WHEREFORE, Plaintiffs demand judgment:

A. Requiring Defendants, jointly and severally, to compensate Plaintiffs for the loss they have sustained as a result of the wrongs alleged above and herein.

B. Awarding the Plaintiffs punitive damages against the Defendants, jointly and severally, for the loss they have sustained as a result of the wrongs alleged above and herein in such amount as to this Honorable Court shall be deemed fair and reasonable.

C. Awarding Plaintiffs the costs and expenses of this action, including reasonable counsel fees.

D. Granting such other and further relief as may be just and proper.

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EXHIBIT 10 TO AFFIDAVIT OF ARNOLD I. ROTH.

- x

SHELDON BERGER, and others,
Plaintiffs,
-v-
WEIS SECURITIES, INC., and others,
Defendants.

74 Civ. 186

- x

GEORGE P. GOVATOS, SR., Plaintiff,
-v-
WEIS SECURITIES, INC., and others,
Defendants.

74 Civ. 2832

- x

IRWIN S. BARSHACK, Plaintiff,
-v-
WEIS SECURITIES, INC., and others,
Defendants.

74 Civ. 2833

- x

This is a motion by defendant Touche Ross & Co. (Touche) in each of these three actions. The three actions were separately commenced by the filing of separate complaints and there has not been any order of consolidation (Fed. R. Civ. P. 42(a)).

It should be noted that, in the federal courts, even actions which are consolidated do not lose their separate identities; it is doubtful that in the federal courts consolidated pleadings are ever in order. See Johnson v. Manhattan Ry. Co., 289 U.S. 479, 496-97 (1933); 5 Moore's Federal Practice (2d ed.) 41-21 and 41-22

The last pleading for plaintiffs in the Berger action is the second amended complaint served January 31, 1975.

The last pleading for plaintiff in the Govatos action and for plaintiff in the Barshack action is an "amended complaint", a single document containing the captions of both actions and

served January 31, 1975. This joint or consolidated pleading was filed and docketed in the Covatos action only. There seems to be no authority for this procedure and its propriety is, as indicated above, at least doubtful; for present purposes, however, the joint pleading will be considered as a separate amended complaint in each of the two actions.

These three actions were brought after the failure in 1973 of defendant Weis Securities, Inc. (Weis), a large stock brokerage house. Weis must be a corporation but where incorporated does not appear; its principal place of business is said to have been in the City of New York.

All plaintiffs in the three actions were employees of Weis and are (or were at one time) shareholders of Weis.

Weis was a broker-dealer registered with the Securities and Exchange Commission (SEC), a member of the New York Stock Exchange (NYSE) and of other stock exchanges, and a member of the National Association of Securities Dealers (NASD).

Defendant Touche is a firm of certified public accountants and acted as such for Weis.

The eight individual defendants are former officers and directors of Weis. All except Cohen are (or were at one time) shareholders of Weis; all are persons controlling Weis. See Section 15 of the Securities Act of 1933 (15 U.S.C. § 77o; the 1933 Act) and Section 20(a) of the Securities Exchange Act of 1934 (15 U.S.C. § 78t; the 1934 Act)

On May 30, 1973, Judge Gurfein (then a District Judge)

filed an opinion and order finding that the customers of Weis were in need of protection under the Securities Investor Protection Act (SIPA) (15 U.S.C. § 78eee(b)(1)(A) and appointing a trustee for the liquidation of the business of Weis (15 U.S.C. §§ 78eee(b)(3) and 78fff).

The present motion by defendant Touche appears to be directed to the second amended complaint in the Berger action and to the amended complaints in the Govatos and Barshack actions. The motion asks in substance:

(a) for an order dismissing each claim for failure to state with particularity the circumstances constituting fraud (Fed. R. Civ. P. 9(b));

(b) for an order dismissing each claim for failure to state a claim upon which relief can be granted (Fed. R. Civ. P. 12(b)(6));

(c) for an order dismissing the second claim for lack of jurisdiction over the subject matter (Fed. R. Civ. P. 12(b)(1)); and

(d) for an order requiring an undertaking of plaintiffs for the payment of costs of the "suit" as to the first claim (15 U.S.C. § 78r(a)).

The movant Touche submitted affidavits of Roth and of Brunhuber. An opposing affidavit of Berging was submitted by plaintiffs in the Govatos and Barshack actions. Annexed to the Berger plaintiffs' memorandum of law are copies of affidavits of Schultz and Mason, the originals of which were served in connection with the motions to dismiss the amended complaint. These affidavits are excluded. The questions raised by the motion can only be decided as matters of law; if there are issues of

fact, these cannot be decided on a motion under Fed. R. Civ. P. 12(b)(6) and no useful purpose would be served by treating the motion as one for summary judgment.

For the sake of simplicity, the Touche motion will first be considered in respect of the Berger action and then in respect of the other two actions.

I

The Berger Action

A.

This action was commenced on January 10, 1974 by fifteen former employees who had been and were then stockholders of Weis. There are three claims; jurisdiction is asserted under Section 22(a) of the 1933 Act and Section 27 of the 1934 Act (apparently as to claims one and three) and under the principle of pendent jurisdiction (apparently claim ~~three~~ Two).

The essence of the first claim was that the individual defendants used false financial statements, documents, and other devices and by so doing induced the plaintiffs to loan money to Weis or to buy stock of Weis or both. This was said to be violative of various sections of the 1933 and 1934 Acts. Movant Touche is said to have aided and abetted the individual defendants.

The second claim attempted to state common law fraud and breach of fiduciary duty.

The third claim averred that defendants caused Weis to violate Rule 325 of NYSE, the net capital requirement.

Defendant Cohen moved under Fed. R. Civ. P. 12(b)(6) to dismiss the first and third claims. The motion was granted by Judge Weinfeld by order filed May 28, 1974, with leave to file an amended complaint specifying "the details of the alleged fraud and the dates on which plaintiffs purchased the securities".

The Berger plaintiffs filed an amended complaint on July 17, 1974. Five additional plaintiffs (Deutschman, Fox, Goldberg, Levy, and Longley) appeared in the caption; whether they were properly added need not now be decided since no objection has been made to their joinder and parties can normally be added. See Fed. R. Civ. P. 21

The amended complaint added as "Schedule A" a list of the dates on which each plaintiff purchased stock of Weis (one plaintiff is also said to have made a loan). The amended complaint also added averments of six specific items in the "SEC X 17A-5 Report" which were said to be misleading (para 22(e)(i)-(vi)), and also a list of nine specific false entries on the "books and records of account required to be kept by Weis pursuant to Section 17 of the [1934] Act" (para 22(f)(i)-(ix)).

Defendant Touche then made substantially the same motion in respect of the amended complaint as the present motion in respect of the second amended complaint. Defendant Cohen made a somewhat similar motion.

After oral argument on November 12, 1974, Judge

Weinfeld dismissed the three claims with leave to serve a further amended complaint; dismissal was under Fed. R. Civ. P. 9 and 11. Judge Weinfeld stated that the amended complaint did not comply with his earlier ruling, that incorporating "the SEC complaint" did not "meet the test", and that when violation of the securities acts was charged, "there should be specific allegations in so far as each movant is concerned".

The Berger plaintiffs then on January 31, 1975 served (and on February 3, 1975 filed) the second amended complaint (the "present complaint") to which the present motion is directed.

B.

Movant urges that the present complaint violates Fed. R. Civ. P. 9(b) in that the "circumstances constituting the fraud" are not stated "with particularity". On this ground Judge Weinfeld twice dismissed earlier pleadings, with leave to amend.

The present complaint adds the averment that defendants Voisin and Cohen were able to withdraw "their substantial investments" in Weis "without alerting plaintiffs" (para 22(h)). The present complaint also adds a paragraph in which it is averred that the conduct of all defendants was "wilful and knowing" and "evinced a reckless disregard for the truth" (para 22, at p. 16). The present complaint adds to its averments of misconduct by defendant Touche a list of seven matters in "the Weis books and records" as to which it is

alleged that Touche "failed to apply and recklessly disregarded generally accepted accounting procedures" (para 24(a)-(g)).

Para 24 standing alone seems to aver mere negligence but read together with the "reckless disregard for the truth" averment in para 22 can be taken as sufficient.

Movant argues that the present complaint does not aver "with particularity" the role of Touche in the alleged fraud to cover up Weis financial situation.

The present complaint must give the defendant sufficient notice of the plaintiff's claims and the grounds upon which they rest. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). It is equally clear that "mere conclusory allegations" of fraudulent conduct are insufficient. Segal v. Gordon, 467 F.2d 602, 607 (2d Cir. 1972) and cases cited therein. In Felton v. Walston and Co., Inc., 503 F.2d 577 (2d Cir. 1974), the Court of Appeals reversed an order of the district judge dismissing a complaint which purported to state a claim under Section 10(b) against an accounting firm. The claim stated in the Felton complaint was that the accounting firm reviewed three specific agreements between two companies and "failed accurately to reflect the effect of those agreements" on the financial statements of one of the companies. The Court of Appeals said that the allegations "do specify the agreements and amounts involved" and that the allegations were "clearly much more than a bald assertion that Main Lafrentz [the accounting firm] engaged in fraudulent acts." 503 F.2d at 581. More

recently, a judge in this District has refused to dismiss a complaint which alleged that "the issuance of some or all of the aforesaid financial statements and pronouncements was caused by or aided and abetted by each of the defendants," one of which was Touche. See Goldberg v. Touche Ross & Co. (74 Civ. 1483, S.D.N.Y., Jan. 25, 1975) (Metzner, J.), CCH Federal Securities Law Reporter ¶95,041; see also Barotz v. Monarch General, Inc., (74 Civ. 2690, S.D.N.Y., Jan. 8, 1975) (Tyler, J.).

Movant argues that because the averments of the present complaint are based solely upon "information and belief" they do not comply with Rule 9(b). Plaintiffs argue that the matters alleged are peculiarly within the knowledge of the defendants and that further particularization should be left to discovery. See Segal v. Gordon, above cited, at 600; Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374, 379 (2d Cir. 1974); 2A Moore's Federal Practice (2d ed.), p. 1924 and following It must be stressed that the motion is addressed to the face of the present complaint; in Segal, the Court of Appeals was reviewing the grant of summary judgment against the plaintiffs and noted that the plaintiffs had failed to specify the details of its claims against two directors when "asked" by the lower court. Segal v. Gordon, above cited, at 600 Here, Touche is clearly on notic e of those items in the various books and records mentioned in the complaint as to which it is alleged that it failed to exercise its statutory duty. If, after discovery,

plaintiffs fail to develop facts showing a breach by Touche of that duty, it may protect itself from the burden of further litigation by moving for summary judgment.

Touche argues that the decisions in Rich v. Touche Ross & Co. (74 Civ. 772, S.D.N.Y., May 2, 1975) (Brieant,J.), CCH Federal Securities Law Reporter ¶ 95,084 and SEC v. Republic National Life Insurance Co., 378 F.Supp. 430 (S.D.N.Y. 1974) (Pollack,J.) control the case at bar. In Rich, the plaintiff sued Touche in its capacity as auditor for Weis; the Rich complaint, as described by Judge Brieant, seems similar to the earlier pleadings in the Berger action. In the present complaint, however, the plaintiffs have cured the primary defect noted with respect to the Rich complaint: they have specified those items in the financial statements which Touche allegedly should have known were false and the omissions which made them false.

The present complaint is not a model pleading under Rule 9(b) or otherwise. But on balance as a pleading it appears to meet the criticisms of Judge Weinfeld. This does not mean that plaintiffs can have discovery, or can submit evidence at trial, as to alleged "fraud" in general. See Sagan v. Dreyfus Corporation, Slip op. 385, 2d Cir., March 28, 1957. They are and will be limited to the accounting items specifically set forth in para 24 of the present complaint. Moreover, at this stage we are dealing only with avermants in a pleading; whether plaintiffs can ever prove their averments is another matter entirely.

Thus far, we have considered the first claim but the same reasoning sustains the second claim.

As to the third claim, however, the pleading is defective under Rule 9(b). The extent of Touche's knowledge of or participation in this alleged violation remains undefined. Rich v. Touche Ross & Co., above cited, ¶ 95,084 at p.97,849 The averments remain unchanged from those of the amended complaint.

C.

Touche moves for an order dismissing the three claims for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6) The principal contention is that the allegedly fraudulent acts of Touche were not "in connection with" the purchase or sale by any plaintiff of securities of Weis.

1.

Defendant Touche argues that the allegations of the first claim amount only to an averment that Touche was negligent in auditing the books of Weis. Were this true, there would be no claim stated under Section 10(b) and Rule 10b-5 against Touche. Lanza v. Drexel & Co., 479 F.2d 1277, 1301, 1304-05 (2d Cir. 1973) (en banc)

The point is somewhat troubling since Touche is not alleged to have known or to have participated in the allegedly fraudulent acts of the individual defendants. The theory of the present complaint is that Touche's failure to follow proper

accounting procedures was negligent to such a degree that it constituted a reckless disregard for the truth of the items in the financial statements with which it was charged with verifying.

The present complaint in paragraph 24 avers that Touche "aided and abetted the violations of the other defendants in that it failed to apply and recklessly disregarded generally accepted accounting principles . . . . Reasonable audits would have revealed the true state of Weis' financial condition and the false and misleading nature of the many entries on Weis' books and records." There follow averments that Touche failed to confirm properly seven items of debit and credit appearing in the accounts of Weis. (Four of the items concern accounting entries made on various dates in April and May of 1972.) Reading this with para 22, the present complaint charges that the individual defendants "aided and abetted" by defendant Touche engaged in a course of conduct which was "wilful and knowing" or "evinced a reckless disregard for the truth and that is the equivalent of actual knowledge and tantamount to wilfulness."

In this Circuit, an averment that a defendant acted with "reckless disregard for the truth" is a sufficient averment of scienter; indeed, the complaint virtually copies the wording found in Lanza v. Drexel, above cited, at 1304-05. See also Shemtob v. Shearson, Hammill & Co., Inc., 448 F.2d 442 (2d Cir. 1971)

It is concluded that the present complaint sufficiently alleges scienter as to Touche.

A schedule attached to the present complaint shows that each plaintiff is a purchaser of Weis securities. As such, each may maintain an action under Section 10(b). Blue Chip Stamps v. Manor Drug Stores, 43 U.S.L.W. 4707 (June 9, 1975)

In this Circuit, a plaintiff seeking to state a claim under Section 10(b) must allege the element of "causation in fact" or "transaction causation", that is, that the "violations in question caused the [plaintiff] to engage in the transaction in question." Schlick v. Penn-Dixie Cement Corp., 507 F.2d 374, 380 (2d Cir. 1974); Shapiro v. Merrill, Lynch, Pierce, Fenner & Smith, Inc., 495 F.2d 228, 239 (2d Cir. 1974) The requirement of causation has also been stated to mean that the fraudulent conduct of the defendant must "touch" or relate to a plaintiff's purchase or sale of securities. See Competitive Associates, Inc. v. Laventhol, Krekstein, Horwath & Horwath, Slip op.No. 456, 2d Cir., May 8, 1975, at pp. 3481-82

It is contended by Touche that where the alleged fraud involves not only omissions of material facts, but also affirmative misrepresentations thereof, plaintiff must show direct reliance on the statements in question. In the context of a claim against an accountant, this argument has been rejected by the Court of Appeals. See Competitive Associates, Inc. v. Laventhol, etc., above cited, at p.3479. In the present complaint plaintiffs allege reliance (para 23); they need not

prove it at this stage of the litigation.

Defendant Touche has raised the substantial point that many of the Berger plaintiffs could not have been induced to purchase securities of Weis by virtue of the alleged fraud of Touche. The argument is that the only specific allegations of wrongful conduct against Touche concern its audits of accounts stated in various books and records of Weis. It argues that since April 28, 1972 is the first date on which any specifically averred misconduct by Touche is said to have occurred, any plaintiff purchasing securities of Weis prior to that date could not have been caused to make such a purchase by any wrongdoing alleged against it in the first claim. It further argues that the earliest date on which any plaintiff could have relied on the allegedly false entries is the date of the first publication of the financial statements of Weis which contained the allegedly false entries, which date is said to be July 10, 1972, or August 22, 1972.

Plaintiffs argue that although the allegedly false entries were not made until on and after April 28, 1972, the unlawful conduct of defendant Touche in failing to verify these accounting items preceded the dates on which the entries are said to have been made. Thus, plaintiffs say that those who purchased Weis securities prior to April 28, 1972 bought during a time when defendant Touche was not performing its duty of inquiry with respect to the accounts in question.

Given the generality of the first claim as to the

fraudulent acts which are alleged to have occurred prior to April 28, 1972, it is concluded that plaintiffs do not state a claim under Section 10(b) against Touche in respect of purchases of securities of Weis prior to April 28, 1972.

Plaintiffs also argue that they constructively sold their Weis securities when Weis entered into liquidation proceedings on May 30, 1973; the argument apparently is that the alleged fraud induced plaintiffs to continue to hold their securities until May 30, 1973, and that the "sale" on that date was therefore in connection with the fraud allegedly committed by Touche. The argument has no merit. That Weis went into liquidation did not mean that plaintiffs were sellers, either "forced" or otherwise. See Molasky v. Garfinkle, 380 F.Supp. 548 (S.D.N.Y. 1974) (Weinfeld,J.); Ingenito v. Bermec Corp., 376 F.Supp. 1154 (S.D.N.Y. 1974) (Lasker, J.)

The discussion thus far has been of Section 10(b) of the 1934 Act. The Berger plaintiffs invoke other sections of the 1933 and 1934 Acts.

They invoke Section 12(2) of the 1933 Act but this is only applicable to a person who "offers" or "sells" a security and defendant Touche is not alleged to have done either.

They invoke Section 15 of the 1933 Act and Section 20 of the 1934 Act but these sections apply only to "controlling persons" and movant Touche is not alleged to have been a "controlling person".

They invoke Section 17(a) of the 1933 Act but I am

persuaded by a fairly recent opinion of Judge Brieant that there is no private right of action under that section. Welch Foods, Inc. v. Goldman,Sachs & Co., (74 Civ. 4011, S.D.N.Y., Sept.30,1974), CCH Federal Securities Law Reporter ¶94,806

They invoke Section 17(a) of the 1934 Act which requires certain books and records to be kept and filed by brokers, dealers and others but movant Touche is not alleged to have been a person to whom or which the section would apply.

They invoke Section 18 of the 1934 Act which imposes civil liability for false statements in any document "filed" under the 1934 Act, such liability to run to any person who bought or sold "in reliance upon" the false statements. There is no averment that any document was filed under the 1934 Act: it may be that in fact the X-17A5 Report (para 22(d) and (e)) was so filed but it is not so averred. There is no averment in any event that plaintiffs actually relied on (read) the X-17A5 Report and reliance on that specific document is essential. Heit v. Weitzen, 402 F.2d 909, 916 (2d Cir. 1968), cert. denied, 395 U.S. 903 (1969) The generalities of para 23 are clearly insufficient in this respect.

The conclusion is that the first count states a claim under Section 10(b) of the 1934 Act but does not state a claim under any other sections of the 1933 or 1934 Act.

2.

Having sustained the first count as pleading a federal claim, it seems clear that the motion must be denied as to the second count.

3.

The third count asserts a claim for violation of Rule 325 of the NYSE, the net capital rule.

This subject is covered by Section 15(c)(3) of the 1934 Act and by SEC Regulations thereunder, namely, Rule 15c 3-1 ("net capital requirements for brokers and dealers").

Since the subject of Rule 325 is covered by the 1934 Act and Regulations, Rule 325 is not needed as part of the "regulatory scheme" of the 1934 Act and federal civil liability for its violation is not to be implied. Colonial Realty Corp. v. Bache & Co., 358 F.2d 178 (2d Cir.), cert. denied, 385 U.S. 817 (1966) Plaintiffs point out that Weis was exempt under SEC Regulations from the SEC net capital requirements, this because it was a member of NYSE. This is true, but does not affect the situation because under the 1934 Act the SEC may subject brokers and dealers to its own net capital rules at any time it sees fit.

Even if a federal civil liability for violation of Rule 325 were implied, such liability would not run to plaintiffs, who are not members of any class intended to be protected by Rule 325. That Rule is to protect customers of brokers, the investing public; plaintiffs are insiders - employees and stockholders of Weis.

The third count fails to state a claim.

4.

Movant Touche asks for an undertaking for costs,

citing to the discretion conferred in this regard by Section 18(a) of the 1934 Act. But the claim under Section 18(a) is being dismissed. The only federal claim remaining is that under Section 10(b) of the 1934 Act. It has been held that there is no authority in Section 10(b) for requiring an undertaking for costs as to a claim asserted under Section 10(b). Fischman v. Raytheon Mfg. Co., 188 F.2d 783, 788 (2d Cir. 1951); McClure v. Borne Chemical Company, 292 F.2d 824, 836-37 (3d Cir.), cert. denied, 368 U.S. 939 (1961)

II

The Govatos and Barshack Actions

A.

The Govatos action was commenced on July 1, 1974; a jury trial was demanded.

Plaintiff George P. Govatos, Sr. (Govatos) is a former employee of Weis and a shareholder therein. (para 4) Plaintiff averred that he had purchased 1000 shares of "voting stock" and 1000 shares of "non-voting stock" of Weis at $25 per share; no dates were mentioned. (para 20) The defendants were the same as those named in the Berger complaint. The Govatos complaint tracked, almost to a word, the Berger complaint.

The Barshack action was also commenced on July 1, 1974 and a jury trial was demanded.

Plaintiff Irwin S. Barshack (Barshack), like Govatos, is a former employee of Weis and a shareholder who "has purchased" 1500 shares of "non-voting stock" at $25 per share;

no date of purchase was given. (para 21)

The Barshack complaint was the same as the Govatos complaint, except that it added as defendants James J. Needham, chairman of the Board of Directors of NYSE, and NYSE itself. Only the second and third claims were stated against these two additional defendants.

By one stipulation and order filed on November 7, 1974 in both the Govatos and Barshack actions the complaints were dismissed with leave to file "an amended complaint" within 45 days. The stipulation and order document was filed only in the Govatos action.

On January 31, 1975, one document entitled "Amended Complaint" and bearing the captions of both actions was served; on February 3, 1975, this single document was filed in, and entered on the docket sheet of, the Govatos action; it has been treated by the parties as an amended complaint also in the Barshack action. In this one document, Govatos and Barshack are referred to as "the plaintiffs". They specify the months in which they purchased their securities of Weis. By an addition to his earlier complaint, plaintiff Barshack averred that he purchased 500 shares of the voting stock of Weis (para 19). Voisin, Needham, and NYSE are not named as defendants in the amended complaint.

Except for the differences relating to the identities of and transactions by the plaintiffs, the amended complaint in the Govatos and Barshack actions is substantially the same as

the second amended complaint in the Berger action.

The present motion by defendant Touche followed.

The discussion of this motion as it is addressed to the second amended complaint in the Berger action is fully applicable to the amended complaints in the Govatos and Barshack actions, this because the pleadings are substantially the same. The same rulings on the motion will therefore be made.

Settle on notice separate orders in each action.

Dated: June 27, 1975

INZER B. WYATT
United States District Judge

(d) The provisions of subsection (b) of this section shall not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (c) of this section shall not apply to any sale, of an equity security not then or theretofore held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market (otherwise than on a national securities exchange or an exchange exempted from registration under section 5 of this title) for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

(e) The provisions of this section shall not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the Commission may adopt in order to carry out the purposes of this section.[1]

Accounts and Records, Reports, Examinations of Exchanges, Members, and Others

SECTION 17. (a) Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association,[2] and every broker or dealer registered pursuant to section 15 of this title,[3] shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

(b) Any broker, dealer or other person extending credit who is subject to the rules and regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to this title shall make such reports to the Board as it may require as necessary or appropriate to enable it to perform the functions conferred upon it by this title. If any such broker, dealer, or other person shall fail to make any such report or fail to furnish full information therein, or, if in the judgment of the Board it is otherwise necessary, such broker, dealer, or other person shall permit such inspections to be made by the Board with respect to the business operations of such broker, dealer, or other person as the Board may deem necessary to enable it to obtain the required information.

Liability for Misleading Statements

SECTION 18. (a) Any person who shall make or cause to be made any statement in any application, report, or document filed pursuant to this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title,[4] which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person (not knowing that such statement was false or misleading) who, in reliance upon such statement, shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading. A person seeking to enforce such liability may sue at law or in equity in any court of competent jurisdiction. In any such suit the court may, in its discretion, require an undertaking for the payment of the costs of such suit, and assess reasonable costs, including reasonable attorneys' fees, against either party litigant.

[1] Public No. 88—467, approved Aug. 20, 1964 (78 Stat. 565), changed section 16 as follows: Subsection (a) was amended, subsection (d) was redesignated as (e), and a new subsection (d) was added.

[2] SECTION 5 of Public No. 719, 73th Cong. (52 Stat. 1076), added "every registered securities association."

[3] SECTION 4 of Public No. 621, 74th Cong. (49 Stat. 1379), substituted "every broker or dealer registered pursuant to section 15 of this title" for "every broker or dealer making or creating a market for both the purchase and sale of securities through the use of the mails or of any means or instrumentality of interstate commerce," which was deleted by that amendment.

[4] SECTION 5 of Public No. 621, 74th Cong. (49 Stat. 1379), added "or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title."

EXHIBIT 12 TO AFFIDAVIT OF ARNOLD I. ROTH.

connection with the member, broker or dealer.

(f) The records required to be maintained and preserved pursuant to sections 17a-3 and 17a-4 may be immediately produced or reproduced on microfilm and be maintained and preserved for the required time in that form. If such microfilm substitution for hard copy is made by a member, broker, or dealer, he shall (1) at all times have available for Commission examination of his records, pursuant to section 17(a) of the Act, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements, (2) arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record, (3) be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission by its examiners or other representatives may request, and (4) store separately from the original one other copy of the microfilm for the time required.

(g) If a person who has been subject to § 240.17a-3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78o), such person shall, for the remainder of the periods of time specified in this section, continue to preserve the records which he theretofore preserved pursuant to this section.

(Sec. 17, 48 Stat. 897, as amended; 15 U.S.C. 78q) [13 F.R. 8212, Dec. 22, 1948, as amended at 26 F.R. 9630, Oct. 12, 1961; 32 F.R. 864, Jan. 25, 1967; 35 F.R. 7644, May 16, 1970]

CROSS REFERENCE: For interpretative releases applicable to § 240.17a-4, see No. 3040 and No. 8024 in tabulation, Part 241 of this chapter.

§ 240.17a-5 Reports to be made by certain exchange members, brokers and dealers.

(a) *Filing reports.* (1) This rule shall apply to every member of a national securities exchange who transacts a business in securities directly with or for others than members of a national securities exchange, every broker or dealer (other than a member) who transacts a business in securities through the medium of any member of a national securities exchange, and every broker or dealer registered pursuant to section 15 of the act.

(2) Every member, broker or dealer subject to this rule shall file reports of financial condition containing the information required by Form X-17A-5, as follows: (i) A report shall be filed as of a date within each calendar year, except that (a) the first such report of a member, broker or dealer (other than one succeeding to and continuing the business of another member, broker or dealer) shall be as of a date not less than one nor more than five months after the date on which such member, broker or dealer becomes subject to this rule (in the case of a registered broker or dealer this shall be the date the registration becomes effective) and (b) a member, broker or dealer succeeding to and continuing the business of another member, broker or dealer need not file a report as of a date in the calendar year in which the succession occurs if the predecessor member, broker or dealer has filed a Form X-17A-5 report in compliance with this rule as of a date in such calendar year; (ii) such reports shall be filed not more than 45 days after the date of the report of financial condition; and (iii) reports for any two consecutive years shall not be as of dates within four months of each other. The reports provided for in this rule shall be filed in duplicate original with the Regional Office of the Commission for the region in which the member, broker or dealer has his or its principal place of business.

(b) *Nature and form of reports.* Each report of financial condition filed pursuant to paragraph (a) of this section shall be prepared and filed in accordance with the following requirements:

(1) The report of a member, broker or dealer shall be certified by a certified public accountant or a public accountant who shall be in fact independent: *Provided, however,* That such report need not be certified if, since the date of the previous financial statement or report filed pursuant to § 240.15b1-2 or this section, (i) said member has not transacted a business in securities directly with or for other than members of a national securities exchange; has not carried any margin account, credit balance or security for any person other than a general partner; and has not been required to file a certified financial statement with

any national securities exchange; or (ii) his or its securities business has been limited to acting as broker (agent) for the issuer in soliciting subscriptions for securities of such issuer, said broker has promptly tranmitted to such issuer all funds and promptly delivered to the subscriber all securities received in connection therewith, and said broker has not otherwise held funds or securities for or owed money or securities to customers; or (iii) his or its securities business has been limited to buying and selling evidences of indebtedness secured by mortgage, deed of trust, or other lien upon real estate or leasehold interests, and said broker or dealer has not carried any margin account, credit balance, or security for any securities customer. A member, broker or dealer who files a report which is not certified shall include in the oath or affirmation required by paragraph (b) (2) of this section a statement of the facts and circumstances relied upon as a basis for exemption from the certification requirements.

(2) Attached to the report shall be an oath or affirmation that, to the best knowledge and belief of the person making such oath or affirmation, (i) the financial statement and supporting schedules are true and correct and (ii) neither the member, broker, or dealer, nor any partner, officer, or director, as the case may be has any proprietary interest in any account classified solely as that of a customer. The oath or affirmation shall be made before a person duly authorized to administer such oaths or affirmations. If the member broker, or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner; or if a corporation, by a duly authorized officer.

(3) If the schedules furnished pursuant to the requirements of items (a), (b), and (c) of part II and the supplementary accountant's certificate furnished pursuant to the audit requirements of Form X-17A-5 are bound separately from the balance of the report, they shall be deemed confidential, except that they shall be available for official use by any official or employee of the United States or any State, by national securities exchanges and national securities associations of which the person filing such report is a member, and by any other person to whom the Commission authorizes disclosure of such information as being in the public interest. Nothing contained in this paragraph shall be deemed to be in derogation of the rules of any national securities association or national securities exchange which give to customers of a member, broker or dealer the right, upon request to such member, broker, or dealer, to obtain information relative to his financial condition.

(c) *Use of certain statements filed with the Securities and Exchange Commission, State Commissions and National Securities Exchanges.* (1) Any member, broker, or dealer who is subject to the provisions of paragraph (a) of this section may file in lieu of the report required by that paragraph a copy of any financial statement which he is, or has been, required to file with any national securities exchange of which he is a member, or with any agency of any State as a condition of doing business in securities therein, *Provided*, That (i) the copy so included reflects his financial condition as of a date not more than 45 days prior to the filing thereof with the Commission, and (ii) the report, as filed with this Commission, meets the requirements of this rule and Form X-17A-5 and contains the information called for by that form.

(2) At the request of any member, broker, or dealer who is (i) an investment company registered under the Investment Company Act of 1940, or (ii) a sponsor or depositor of such a registered investment company who effects transactions in securities only with, or on behalf of, such registered investment company, the Commission will accept any statement of his financial condition filed pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934 or section 30 of the Investment Company Act of 1940 and the rules and regulations promulgated thereunder as a filing pursuant to this rule. Such a filing shall be deemed to satisfy the requirements of this rule for any calendar year in which such a financial statement is filed, *Provided*, That the statement so filed meets the requirements of the other rules under which it is filed with respect to time of filing and content.

(d) *Extension of time for filing reports.* In the event any member, broker, or dealer finds that he cannot file his report for any year within the time specified in paragraph (a) or (c) of this section without undue hardship, he may file with the Commission an application for an extension of time to a specified date which shall not be more than 90 days

after the date as of which his financial condition is reported. The application shall state the reasons for the requested extension and shall contain an agreement to file the report on or before the specified date. The application shall be deemed granted unless the Commission, within ten days after receipt thereof, enters an order denying the application.

(e) *Exemptions.* Any "bank", as defined in section 3(a)(6) of the Act (48 Stat. 882; 15 U.S.C. 78c) shall be exempt from the provisions of this section.

(f) *Qualifications of accountants.* The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of his place of residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(g) *Accountant's certificate* — (1) *Technical requirements.* The accountant's certificate shall be dated, shall be signed manually, and shall identify without detailed enumeration the items of the report covered by the certificate.

(2) *Representations as to audit.* The accountant's certificate (i) shall contain a reasonably comprehensive statement as to the scope of the audit made, including a statement as to whether the accountant reviewed the procedures followed for safeguarding the securities of customers, and including, if with respect to significant items in the report covered by the certificate any auditing procedures generally recognized as normal have been omitted, a specific designation of such procedures and of the reasons for their omission, (ii) shall state whether the audit was made in accordance with generally accepted auditing standards applicable in the circumstances; and (iii) shall state whether the audit made omitted any procedure deemed necessary by the accountant under the circumstances of the particular case.

(3) Nothing in this rule shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (h) of this section.

(h) *Accountant's certificate; options to be expressed.* The accountant's certificate shall state clearly the opinion of the accountant with respect to the financial statement covered by the certificate and the accounting principles and practices reflected therein.

(i) *Accountant's certificate; exceptions.* Any matters to which the accountant takes exception shall be clearly identified; the exception thereto shall be specifically and clearly stated; and, to the extent practicable, the effect of each such exception on the related item of the report shall be given.

(j)(1) If a broker or dealer holding any membership interest in and subject to the capital rules of a national securities exchange whose members are exempt from § 240.15c3-1 by paragraph (b)(2) thereof ceases to be a member in good standing of such exchange, such broker or dealer shall, within two business days after such event, file with the Commission, as of the date of such event:

(i) A proof of money balances of all ledger accounts in the form of a trial balance;

(ii) A computation of aggregate indebtedness and net capital made in accordance with § 240.15c3-1;

(iii) An analysis of the aggregate market value of fully paid securities in customers' security accounts not segregated showing the location of such securities;

(iv) Ledger net credit balances of money borrowed from banks, trust companies, and other financial institutions and from others, which are fully or partially secured by securities carried for the account of any customer, showing, for each loan, an analysis of the market value of all collateral for such borrowings by source of collateral, stating separately the market value of: (*a*) Securties carried for the accounts of customers, (*b*) securities owned by the broker or dealer or by any general or special partner or any director or officer of such broker or dealer, and (*c*) any other securities, and

(v) The aggregate amount of customers' ledger debit balances.

The report shall be filed at the Commission's principal office in Washington, D.C., and in duplicate original with the Regional Office of the Commission for the region in which the broker or dealer has his or its principal place of business: *Provided, however,* That such report need not be made or filed if the Commission, upon written request or upon its own motion exempts such broker or dealer, either unconditionally or on spec-

a-5

ified terms and conditions, from such requirement: *Provided further*, That the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

(2) Attached to the report required by subparagraph (1) of this paragraph shall be an oath or affirmation that to the best knowledge and belief of the individual making such oath or affirmation the information contained in the report is true and correct. The oath or affirmation shall be made before a person duly authorized to administer such oath or affirmation. If the member, broker, or dealer is a sole proprietorship, the oath or affirmation shall be made by the proprietor; if a partnership, by a general partner, or if a corporation, by the chief executive officer, or in his absence, by the person authorized to act in his place.

(3) For the purposes of this § 240.17a-5(j), "membership interest" shall include the following: Full membership, allied membership, associated membership, floor privileges, and any other interest that entitles a broker or dealer to the exercise of any privilege on an exchange.

(i) For the purposes of this section and § 240.15c3-1(b)(2), any broker or dealer shall be deemed to have ceased to be a member in good standing of such exchange when he or it has resigned, withdrawn, or been suspended or expelled from a membership interest in such exchange or has directly or through any associated person sold or entered into an agreement for the sale of a membership interest which would on consummation thereof result in the termination of the broker or dealer's membership interest in such exchange.

(4) Whenever any national securities exchange whose members are exempt from § 240.15c3-1 by paragraph (b)(2) thereof takes any action which causes any broker or dealer which is a member of such exchange to cease to be a member in good standing of such exchange or when such exchange learns of any action by such member or any other person which causes such broker or dealer to cease to be a member in good standing of such exchange, such exchange shall report such action promptly to the Commission, furnishing information as to the circumstances surrounding the event.

(Sec. 17, 48 Stat. 897, as amended; 15 U.S.C. 78q) [13 F.R. 8213, Dec. 22, 1948, as amended at 22 F.R. 6193, Aug. 14, 1957; 30 F.R. 11851, Sept. 16, 1965; 32 F.R. 14018, Oct. 10, 1967; 35 F.R. 18511, Dec. 5, 1970]

CROSS REFERENCE: For interpretative release applicable to § 240.17a-5, see No. 51 in tabulation, Part 211 of this chapter.

§ 240.17a-6 Right of a National Securities Exchange to destroy or dispose of applications, reports, and documents filed with it pursuant to sections 12, 13, 14 and 16.

(a) Any application, report or document, or portion thereof, which has been on file with a national securities exchange for more than five years pursuant to sections 12, 13, 14, or 16 of the act or any rule or regulation promulgated by the Commission pursuant to any of such sections may be destroyed or otherwise disposed of by such exchange pursuant to the terms of a plan for the destruction or disposition of such application, report or document, if such plan has been filed with the Commission by such exchange and has been declared effective by the Commission.

(b) For the purposes of this section a plan filed with the Commission by a national securities exchange shall not become effective unless the Commission, having due regard for the public interest and for the protection of investors, declares the plan to be effective. The Commission in its declaration may limit the applications, reports and documents as to which it shall apply, and may impose any other terms and conditions to the plan and to the period of its effectiveness which it deems necessary or appropriate in the public interest or for the protection of investors.

(Sec. 17, 48 Stat. 897, as amended; 15 U.S.C. 78q) [16 F.R. 3109, Apr. 10, 1951]

§ 240.17a-7 Records of non-resident brokers and dealers.

(a)(1) Except as provided in paragraph (b) of this section, each non-resident broker or dealer registered or applying for registration pursuant to section 15 of the Securities Exchange Act of 1934, as amended, shall keep, maintain, and preserve, at a place within the United States designated in a notice from him as provided in subparagraph (2) of this paragraph, true, correct, complete and current copies of the books and records which he is required to make, keep cur-

AFFIDAVIT OF PHILIP H. COHEN IN SUPPORT OF MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	
Plaintiffs,	:	76 Civ. 1981 (I.B.W.)
-against-	:	
TOUCHE ROSS & CO., Defendant.	:	

- -X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Philip H. Cohen, being duly sworn, deposes and says:

1. I am, and have been since September 1, 1969, a partner of Touche Ross & Co.

2. I am, and have been since December 4, 1936, a citizen, domiciliary, and resident of the State of New York. I presently reside, and have resided since March 10, 1974, at 44 W. 62nd Street, New York, New York 10023.

Philip H. Cohen

Sworn to before me this
14th day of September, 1976

Notary Public
Notary Public, State of New York
No. 03773510
Qualified in Kings County
Commission Expires March 30, 1977

AFFIDAVIT OF BARRY N. COOPER IN SUPPORT OF MOTION TO DISMISS.

ED STATES DISTRICT COURT
HERN DISTRICT OF NEW YORK

- -X

ARD S. REDINGTON, as Trustee for :
liquidation of the business of
is Securities, Inc., and SECURITIES :
VESTOR PROTECTION CORPORATION,
:
Plaintiffs, 76 Civ. 1981
: (I.B.W.)
-against-
:
TOUCHE ROSS & CO.
Defendant. :
:

- -X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Barry N. Cooper, being duly sworn, deposes and says:

1. I am, and have been since September 1, 1973, a partner of Touche Ross & Co.

2. I am, and have been since December 28, 1938, a citizen, domiciliary, and resident of the State of New York. I presently reside, and have resided since August 25, 1969, at 38 Flower Hill Road, Huntington, New York 11743.

Sworn to before me this
17th day of September, 1976

Barry N. Cooper

Notary Public
JOHN R. COURTNEY
Notary Public, State of New York
No. 03-7703
Qualified in Kings County
Commission Expires March 30, 1977

AFFIDAVIT OF BRUCE E. BAKER IN OPPOSITION TO MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc. and SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiffs,	76 Civ. 1981(IBW)
-against-	AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS
TOUCHE ROSS & CO., Defendant.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Bruce E. Baker, being duly sworn, deposes and says:

1. I reside at 47 Orange Drive, Jericho, New York. I am the head of the administrative staff maintained for Weis Securities matters by Edward S. Redington, Esq., Trustee for the liquidation of the business of Weis Securities, Inc. pursuant to the Securities Investor Protection Act of 1970. I make this affidavit in opposition to a motion by defendant Touche Ross & Co. to dismiss this action on jurisdictional and other grounds.

2. Pursuant to court order dated June 1, 1973, all proofs of claim and customer claims asserted in the Weis liquidation have been filed with the Trustee as directed by the court order. Upon receipt, proofs of claim were time- and date-stamped and then placed in appropriate files by the Trustee's administrative staff. The files containing the proofs of claim and any related correspondence or documentation are maintained by the Trustee's administrative staff under my supervision and control.

3. Annexed hereto as Exhibit A is a true copy from the Trustee's files of one of the two proofs of claim filed in the Weis liquidation by defendant Touche Ross & Co. The stamp on the face of the proof of claim indicates that it was received by the Trustee's administrative staff at 11:31 A.M. on July 13, 1973. The notations "'A'" and "total $87,107.00" on the face of the proof of claim were added by a member of the Trustee's administrative staff for processing purposes.

4. Annexed hereto as Exhibit B is a true copy from the Trustee's files of a second proof of claim filed in the Weis liquidation by defendant Touche Ross & Co. for "services rendered for benefit of estate." Again, a stamp on the face of the proof of claim indicates that it was received by the Trustee's administrative staff at 11:31 A.M. on July 13, 1973. The notation "'B'" and the accompanying scribble on the upper righthand corner of the face of the proof of claim were added by a member of the Trustee's administrative staff for processing purposes.

WHEREFOFE, deponent respectfully requests that since defendant Touche Ross & Co. has consented to the jurisdiction of this Court by filing the claims identified in paragraphs 3 and 4, its motion to dismiss the Trustee's claims for relief on jurisdictional grounds be denied.

Bruce E. Baker

Bruce E. Baker

Sworn to before me this
5th day of January, 1977

Rose Manikole

Notary Public

ROSE MANIKOLE
Notary Public, State of New York
No. 30-1513027
Qualified in Nassau County
Commission Expires March 30, 1979

EXHIBIT A TO AFFIDAVIT OF BRUCE E. BAKER.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff,* SECURITIES INVESTOR PROTECTION CORPORATION, *Applicant,* v. WEIS SECURITIES, INC., *Defendant.*	73 Civ. 2332

PROOF OF CLAIM BY INDIVIDUAL

STATE OF
COUNTY OF } ss.:

Touche Ross & Co, of No. 1633 Broadway Street, in New York County of New York, State of New York, says:

1. That Weis Securities, Inc., the above-named defendant, was at and before May 24, 1973 and still is, justly and truly indebted [*or* liable] to the undersigned in the sum of $75,443 dollars.

2. That the consideration of this debt [*or* liability] is as follows: see attached.

3. That no part of the debt [*or* liability] has been paid except none.

4. That there are no set-offs or counterclaims to the debt [*or* liability] except none.

5. That this creditor does not hold, and has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received, any security or securities for the debt [*or* liability] except none.

6. [*If the debt or liability is founded upon an instrument of writings*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

7. [*If the debt is founded upon an open account*] That the debt was [*or* will become] due on ..... [*or* that the average due date thereof is .....], that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except .....

Dated at New York, this 11th day of July, 1973.

Touche Ross & Co
Creditor.

There are penalties for presenting fraudulent claims.

TOUCHE ROSS & CO.

294a

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 10, 1973

Mr. Edward S. Redington
Trustee in Liquidation of
Weis Securities Inc.
Hughes, Hubbard & Reed
One Wall Street
New York, N. Y. 10005

FOR SERVICES RENDERED to Weis Securities Inc.

For services rendered covering the regular New York Stock Exchange, Inc. audit as of April 27, 1973 for the purpose of examining the Answers to Financial Questionnaire and Statement of Financial Condition as of that date. (Examination was not completed nor were reports submitted)	$67,972
Services rendered by our London office covering the examination of the accounts and records, systems review and accounting systems of Weis, Voisin & Co., Inc. - London Branch and Weis, Voisin & Co. International Limited, as of November 24, 1972 - £2,077.64	5,313
Services rendered by our Paris Office covering the examination of financial statements of Weis, Voisin S.A.R.L. - Paris as of November 24, 1972, value added tax problem and meeting to discuss present and future operations, F.7,350	1,900
Services rendered by our Paris Office covering the preparation of the French corporate income tax return for Weis, Voisin S.A.R.L. - Paris for the year ended December 31, 1972 filed April 30, 1973 - F.1,000	258
Total	$75,443

EXHIBIT B TO AFFIDAVIT OF BRUCE E. BAKER.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

B"

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff,* SECURITIES INVESTOR PROTECTION CORPORATION, *Applicant,* v. WEIS SECURITIES, INC., *Defendant.*	73 Civ. 2332

PROOF OF CLAIM BY INDIVIDUAL

STATE OF
COUNTY OF } ss.:

Touche Ross & Co., of No. 1633 Broadway ..... Street, in New York, County of New York, State of New York ....., says:

1. That Weis Securities, Inc., the above-named defendant, was at and before May 24, 1973 and still is, justly and truly indebted [*or* liable] to the undersigned in the sum of $11,664 ..... dollars.

2. That the consideration of this debt [*or* liability] is as follows: ..... see attached .....

3. That no part of the debt [*or* liability] has been paid except ..... none .....

4. That there are no set-offs or counterclaims to the debt [*or* liability] except ..... none .....

5. That this creditor does not hold, and has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received, any security or securities for the debt [*or* liability] except none .....

6. [*If the debt or liability is founded upon an instrument of writings*] That the instrument upon which the debt [*or* liability] is founded is attached hereto [*or* is lost or destroyed, as set forth in the affidavit attached hereto].

7. [*If the debt is founded upon an open account*] That the debt was [*or* will become] due on ..... [*or* that the average due date thereof is .....], that no note or other negotiable instrument has been received for such account or any part thereof [*or* that the debt is evidenced by a note [*or* other negotiable instrument], which is attached hereto]; and that no judgment has been rendered thereon, except .....

Dated at New York, this 11th day of July, 1973.

Touche Ross & Co
Creditor.

There are penalties for presenting fraudulent claims.

TOUCHE ROSS & CO.

296a

1633 BROADWAY
NEW YORK, NEW YORK 10019

July 10, 1973

Mr. Edward S. Redington
Trustee in Liquidation of
Weis Securities Inc.
Hughes, Hubbard & Reed
One Wall Street
New York, N. Y. 10005

FOR SERVICES RENDERED to Weis Securities Inc.

For services rendered for benefit of estate:

Meetings and conferences with personnel of the New York Stock Exchange, Inc. and the Securities and Exchange Commission;	$ 4,537
Substantiation and documentation of alleged fraudulent bookkeeping practices and entries;	2,975
Confirmation of bank loans and related collateral as of April 13, 1973 applicable to the alleged fraudulent bookkeeping entries.	4,152
Total	$11,664

AFFIDAVIT OF CLARENCE FRIED IN OPPOSITION TO MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiffs,	76 Civ. 1981 (I.B.W.)
-against-	AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT
TOUCHE ROSS & CO., Defendant.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

CLARENCE FRIED, being duly sworn, deposes and says:

1. I am a member of the firm of Hawkins, Delafield & Wood, attorneys for Securities Investor Protection Corporation ("SIPC"), one of the two plaintiffs in this action, and am fully familiar with the proceedings herein. I submit this Affidavit, together with the accompanying Affidavit of Wilfred R. Caron, in opposition to the present motion by defendant Touche Ross & Co. ("Touche Ross") for an order (i) dismissing the complaint herein, each of the causes of action therein alleged, and this action, on the grounds of lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted, and (ii) to the extent that the foregoing relief is not granted, staying this action pending determination of a parallel action between the same parties as herein in the Supreme Court of the State of New York, New York County (the "State Court Action").

2. The plaintiffs in this action seek to recover the damages they suffered as a direct result of Touche Ross' failure to properly perform certain accounting services for

Weis Securities, Inc. ("Weis"), a brokerage firm being liquidated under the Securities Investor Protection Act of 1970 ("SIPA"). Because of the liquidation of Weis and pursuant to the obligation created by SIPA, plaintiff SIPC has paid over $14,000,000 to satisfy the claims of approximately 34,000 customers of Weis and may incur further expenses. Had Touche Ross performed its accounting services properly the Weis liquidation might have been avoided and certainly the cost to SIPC would have been substantially less.

This Action and the State Court Action

3. In this action, SIPC seeks to recoup from Touche Ross, a firm of certified public accountants, the monies paid to the customers of Weis. SIPC's four initial counts (i.e., the first through the fourth, Comp. ¶¶50-69) are predicated on Touche Ross' violation of the Securities Exchange Act of 1934 (the "1934 Act"). In addition, SIPC asserts four claims (i.e., the fifth through the eighth, Comp. ¶¶70-85) based on common law principles. The federal court's jurisdiction with respect to SIPC's counts arising under the 1934 Act is exclusive because of Section 27 of that Act. Thus, the federal court is the only court which can completely dispose of all the possible issues here involved, state as well as federal.

4. While the factual allegations in the State Court Action are similar to the allegations herein, the counts asserted by SIPC in the State Court Action are necessarily more limited than those contained in the complaint which Touche Ross would have this court dismiss. Obviously, the state court lacks jurisdiction to enter in SIPC's counts arising under the 1934 Act.

5. The State Court Action was instituted by the service of a summons without a complaint in July of 1975 as a precautionary measure to preserve the plaintiffs' state claims from the bar of the statute of limitations. By a series of letter agreements (dated July 2, 1975; December 19, 1975; and March 25, 1976) the parties to the State Court Action agreed that all applicable statutes of limitations and time limits which had not run by July 2, 1976 were tolled and extended. The last in this series of letter agreements, dated March 25, 1976, a copy of which is annexed hereto as Exhibit A, provided in pertinent part:

> "The undersigned [Touche Ross] hereby confirms and agrees that all statutes of limitations and time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and by SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which had not run before July 2, 1975, are further tolled and extended to May 3, 1976. Further, the undersigned agrees not to assert, and hereby waives any defense based upon the omission by the Trustee and by SIPC, or by either of them, to take legal action against the undersigned on and after the date hereof, to and including May 3, 1976, without prejudice to any defense based on such omission to take legal action prior to July 2, 1975."

6. Pursuant to the letter agreement of March 25, 1976, this action was commenced, by the filing of the complaint herein, on April 30, 1976. The complaint in the State Court Action was served several days later on May 3, 1976. Prior to the filing of the complaint herein, Touche Ross was obviously aware of the possibility that a federal court action would be commenced against it by SIPC and the Trustee in addition to the already instituted State Court Action, because the letter agree-

ments tolling and extending the running of the applicable statutes of limitations were entered into subsequent to the commencement of the State Court Action but prior to the commencement of this action.

7. Since its inception, the State Court Action--unlike this action--has been practically dormant. Touche Ross has neither answered nor moved with respect to the state court complaint. Its time to do so has been extended by the most recent in a series of stipulations, dated October 28, 1976, a copy of which is annexed hereto as Exhibit B, to the forty-fifth day after the final determination by this court of the instant motion. That stipulation also provides that all proceedings in the State Court Action shall be stayed until a final determination by this court of the instant motion. Moreover, no disclosure has been obtained from any party in the State Court Action. In that action, defendant had propounded a set of interrogatories on each of the plaintiffs and had served notices to take the depositions of each of the plaintiffs. However, these interrogatories and notices of depositions were withdrawn pursuant to the aforementioned stipulation in the State Court Action. In sum, therefore, plaintiffs have not done anything in the State Court Action, except serve a summons and complaint on defendant.

8. In this action, on the other hand, Touche Ross has already partially answered a set of interrogatories propounded by the plaintiffs herein. In addition, to the extent that Touche Ross objected to those interrogatories, the plaintiffs herein moved to compel further answers and a hearing before Magistrade Schreiber was scheduled. By a stipulation

in this action,* that motion was withdrawn without prejudice and the need for the hearing was obviated.

9. Thus, the facts indicate that, as between this action and the State Court Action, this action is the more comprehensive and farther advanced. In addition, I respectfully remind this court that, unlike the New York State court, it has special expertise and familiarity with SIPA liquidations, and particularly with the proceedings which have resulted from the liquidation of Weis.

The Absence of a Touche Ross Partner Resident in Washington, D. C.

10. Touche Ross challenges the jurisdiction of this court over SIPC's claims in this action on the ground, inter alia, that the citizenship of SIPC and Touche Ross is not diverse for the purposes of 28 U.S.C. §1332. Touche Ross contends that SIPC's failure to allege that no Touche Ross partner resides in Washington, D. C., of which SIPC is a citizen, renders the invocation of that Section as a basis for this court's jurisdiction defective. Significantly, however, Touche Ross has failed to submit any evidence indicating that one of its partners does reside in the District of Columbia. Touche Ross' failure to submit such evidence is understandable in view of the apparent facts. On information and belief, no Touche Ross partner resides in Washington, D. C. The information upon which this belief is based is contained in the Directory for 1976-77 of Touche Ross partners and managers. The partners listed therein under the heading "Washington, D. C." do

* For the convenience of the court, a copy of the stipulation, "so ordered" by Judge Wyatt on November 12, 1976, is annexed hereto as Exhibit C.

not include a single individual who resides in the District of Columbia. Rather, all of Touche Ross' Washington, D. C. partners appear to reside in either Maryland or Virginia. The relevant portion of the Touche Ross Directory for 1976-77 is annexed hereto as Exhibit D.

11. In light of the facts contained in this Affidavit and in the accompanying Affidavit of Wilfred R. Caron, and for the reasons set forth in SIPC's accompanying memorandum of law, it is respectfully submitted that the instant motion of defendant Touche Ross be in all respects denied.

Clarence Fried
CLARENCE FRIED

Sworn to before me this
7th day of January, 1977.

Dorothy M. Falleo
Notary Public

DOROTHY M. FALLEO
Notary Public, State of New York
No. 41-6227510
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1978

EXHIBIT A TO AFFIDAVIT OF CLARENCE FRIED.

TOUCHE ROSS & CO.
1633 BROADWAY
NEW YORK, NEW YORK 10019

Edward S. Redington, Esq.
Trustee for the Liquidation of
the Business of Weis Securities, Inc.
One Wall Street
New York, New York 10005

Securities Investor Protection Corporation
900 Seventeenth Street, N.W.
Suite 800
Washington, D. C. 20006

Dear Sirs:

The undersigned acknowledges that it has been notified by Edward S. Redington, Trustee for the Liquidation of the Business of Weis Securities, Inc. (the "Trustee") and by the Securities Investor Protection Corporation ("SIPC") that the Trustee and SIPC are investigating various causes of action which they may have against the undersigned arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc. The undersigned also acknowledges that, by its letters to the Trustee and SIPC of July 2, 1975 and December 19, 1975, all statutes of limitations and time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which had not run by July 2, 1975, were tolled and extended

to April 2, 1976. The undersigned, the Trustee and SIPC believe that it is in their mutual best interests to enter into the agreement herein so that the Trustee and SIPC will be free to give further consideration to this matter while at the same time protecting whatever claims they may now have against the undersigned.

The agreement and waiver referred to herein is for good and valuable consideration, including, but not limited to, the Trustee and SIPC refraining from taking any immediate legal action against the undersigned.

The undersigned hereby confirms and agrees that all statutes of limitations and time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and by SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which had not run before July 2, 1975, are further tolled and extended to May 3, 1976. Further, the undersigned agrees not to assert, and hereby waives any defense based upon the omission by the Trustee and by SIPC, or by either of them, to take legal action against the undersigned on and after the date hereof, to and including May 3, 1976, without prejudice to any defense based on such omission to take legal action prior to July 2, 1975.

It is understood and agreed that this agreement is without prejudice to the signatories hereto, except to the extent of establishing the specific agreement and waiver referred to herein.

Very truly yours,

TOUCHE ROSS & CO.

By _____
A Member of the Firm
1633 Broadway
New York, New York 10019

Dated: March 25, 1976

Agreed to and accepted by:

_____
EDWARD S. REDINGTON, ESQ.

SECURITIES INVESTOR PROTECTION CORPORATION

By _____

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 25th day of March, 1976, before me personally came Carleton H. Griffin, to me known, who, being by me duly sworn, did depose and say that he resides at 1 Lauterstan Lane, Darien, Connecticut ; that he is a member of Touche Ross & Co., the partnership described in the foregoing instrument; that he signed his name thereto on behalf of said partnership; and that he has been duly authorized to do the same.

Ruth S. Botwin
Notary Public

RUTH S. BOTWIN
Notary Public, State of New York
No. 31-4[illegible]
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT B TO AFFIDAVIT OF CLARENCE FRIED.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc. and SECURITIES INVESTOR PROTECTION CORPORATION,	:	Index No. 13996/76
Plaintiffs,	:	STIPULATION
- against -	:	
TOUCHE ROSS & CO.,	:	
Defendant.	:	

- x

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys for the parties herein, as follows:

1. The interrogatories, dated September 3, 1976, served by defendant upon each of the plaintiffs shall be, and the same hereby are, withdrawn without prejudice.

2. The notices, dated September 3, 1976, to take the deposition of each of the plaintiffs shall be, and the same hereby are, withdrawn without prejudice.

3. Plaintiffs' motion, dated October 19, 1976, to stay further proceedings in this Court or, in the alternative, to obtain a protective order relieving plaintiffs of the necessity of responding to the aforementioned interrogatories and the aforementioned notices of deposition, shall be, and the same hereby is, withdrawn without prejudice.

4. Defendant's cross-motion, dated October 26, 1976, to dismiss certain of the causes of action asserted by plaintiffs in the complaint herein shall be, and the same hereby is, withdrawn without prejudice.

5. Defendant's motion, brought on by order to show cause, dated October 26, 1976, for an order directing that any stay of the disclosure sought by the aforementioned interrogatories and the aforementioned notices of deposition shall be effective only so long as plaintiffs shall not proceed with discovery in an action (the "Federal Court Action") pending in the United States District Court for the Southern District of New York and entitled Edward S. Redington and Securities Investors Protection Corporation v. Touche Ross & Co. (76 Civ. 1981 (IBW)), shall be, and the same hereby is, withdrawn without prejudice.

6. Except as provided in paragraph 7 hereof, all proceedings in this action are stayed until final determination by the District Court of defendant's motion, dated September 15, 1976, in the Federal Court Action to dismiss or stay the Federal Court Action. Without limiting the generality of the foregoing, it is expressly agreed that none of the parties shall proceed or attempt to proceed with disclosure or discovery and defendant shall not answer or move with respect to the complaint herein

during the period of the stay.

7. The stay provided for by paragraph 6 hereof shall be effective so long, and only so long, as the stay provided for by paragraph 4 of the stipulation in the Federal Court Action, a copy of which is annexed hereto as Exhibit 1, is in effect. ~~and being complied with.~~

Pl & CKS.

8. Defendant's time to answer or move with respect to the complaint herein is extended to and including the 45th day after final determination by the District Court of defendant's said motion to dismiss or stay the Federal Court Action.

Dated: October 28, 1976

Hughes Hubbard & Reed

HUGHES HUBBARD & REED
Attorneys for Plaintiff
Edward S. Redington

Hawkins, Delafield & Wood

HAWKINS, DELAFIELD & WOOD
Attorneys for Plaintiff
Securities Investors Protection
Corporation

Rosenman Colin Freund Lewis & Cohen

ROSENMAN COLIN FREUND LEWIS
& COHEN
Attorneys for Defendant

EXHIBIT C TO AFFIDAVIT OF CLARENCE FRIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOV 15 1976

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc. and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

- x

76 Civ. 1981 (IBW)

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned attorneys for the parties herein, as follows:

1. Plaintiffs shall have to and including January 7, 1977 to serve papers with respect to defendant's motion of September 15, 1976 to dismiss or stay this action pursuant to Rule 12(b), Federal Rules of Civil Procedure ("defendant's Rule 12(b) motion").

2. Defendant shall have to and including February 4, 1977 to serve reply papers with respect to defendant's Rule 12(b) motion.

3. The return date of defendant's Rule 12(b) motion shall be February 11, 1977.

4. All proceedings (other than proceedings with respect to defendant's Rule 12(b) motion) in this action are stayed until a final determination by this Court of defendant's Rule 12(b) motion. Without limiting the generality of the foregoing, it is expressly agreed that all discovery herein is stayed and none of the parties shall proceed with discovery during the period of the stay.

5. The notice, dated June 8, 1976, to take the deposition of Karl Brunhuber shall be, and the same hereby is, withdrawn without prejudice.

6. Plaintiffs' present motion pursuant to Rules 33(a) and 37(a), Federal Rules of Civil Procedure, relating to defendant's answers and objections to interrogatories shall be, and the same hereby is, withdrawn without prejudice.

October 28, 1976

HUGHES HUBBARD & REED

By _____
A Member of the Firm
Attorneys for Plaintiff
Edward S. Redington
One Wall Street
New York, New York 10005
(212) WH 3-6500

HAWKINS, DELAFIELD & WOOD

By _____
A Member of the Firm
Attorneys for Plaintiff
Securities Investor
Protection Corporation
67 Wall Street
New York, New York 10005
(212) 952-4700

ROSENMAN COLIN FREUND LEWIS
& COHEN

By _____
A Member of the Firm
Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 644-7000

SO ORDERED: March 15, 1978

_____
U. S. D. J.

EXHIBIT D TO AFFIDAVIT OF CLARENCE FRIED.

TOUCHE ROSS

DIRECTORY

Serve Appendix on----

Rosenman Colin Freund Lewis & Cohen
575 Madison Avenue

just get back cover signed

1976-1977

WASHINGTON, D.C. 20036 1900 M Street, N.W.	202 452-1200

PARTNERS

ATKINS, William Director - Management Services Operations 6728 Michaels Drive Bethesda, Maryland 20034	301 365-0699
BALDWIN, Jeffry B. 9817 Clydesdale Street Potomac, Maryland 20854	301 239-5971
BANKS, Douglas W. Director - Tax Operations 6435 Shady Lane Falls Church, Virginia 22042	703 532-5612
BEACH, William D. 9513 Accord Drive Potomac, Maryland 20854	301 299-9531
CUE, Frederick C. 9524 Bent Creek Lane Vienna, Virginia 22180	703 759-3376
FISHER, Elmer F. Director - Operations 8500 Warde Terrace Potomac, Maryland 20854	301 365-7593
HARRIS, Arthur F.M. 7804 Honeybee Court Bethesda, Maryland 20034	301 365-2717
JACKOWSKY, Richard A. 10922 Thanlet Lane Reston, Virginia 22070	703 437-0207
McCOY, James A. 2101 Sheriff Court Vienna, Virginia 22180	703 938-8705
MLOT, Aloysius M. Director - Audit Operations 14532 Chesterfield Road Rockville, Maryland 20853	301 460-5838
OLSEN, Howard 950 Swinks Mill Road McLean, Virginia 22101	703 790-5327

WASHINGTON, D.C. (Continued)

PLAIN, Robert E. Director - Professional Standards Review 1420 Crestridge Drive Silver Spring, Maryland 20910	301 588-9254
POLANSKY, Gerald A. - Partner in Charge 4002 Manor Park Court Rockville, Maryland 20853	301 871-8195
Secretary to Mr. Polansky CLARK, Victoria A. 2130 N. Street, N.W. Apt. 511 Washington, D.C. 20036	202 293-6935
YERRICK, John A. 6813 Winterberry Lane Bethesda, Maryland 20034	301 229-1427

MANAGERS

TON, MASSACHUSETTS 02108

EXHIBIT E TO AFFIDAVIT OF CLARENCE FRIED.

September 1, 1971

George L. Manias, Esq.
Trustee John Edwards & Co., Inc.
c/o Cleveland, Waters & Bass
16 Centre Street
Concord, New Hampshire

Dear Sir:

At the request of the firm of Gadsby & Hannah we are writing you with regard to the appointment of an accountant to assist the trustee in the matter of John Edwards & Co., Inc. We understand that Securities Investor Protection Corporation is involved in the trusteeship.

Our hourly rates, which have previously been approved by SIPC in another case, are as follows:

Partners	$60-75
Managers	$33-40
Supervisors	$27-30
Seniors	$22-25
Staff Assistants	$17-20

Should we be appointed, as far as this engagement is concerned, we agree to make no changes in the above rates for a period of one year from the date of this letter.

Very truly yours,

A. R. Hills

Arthur R. Hills

ARH:mm

cc: Jeffrey Summers, Esq.
Gadsby & Hannah

AFFIDAVIT OF WILFRED R. CARON IN OPPOSITION TO MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	:	76 Civ. 1981 (I.B.W.)
Plaintiffs,	:	
-against-	:	AFFIDAVIT IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT
TOUCHE ROSS & CO.,	:	
Defendant.	:	

District of Columbia: ss.

WILFRED R. CARON, being duly sworn, deposes and says:

1. Deponent is the Associate General Counsel of plaintiff Securities Investor Protection Corporation ("SIPC") and is familiar with the prior proceedings herein, in particular the motion of the defendant Touche Ross & Co. ("Touche Ross") pursuant to Rule 12 of the Federal Rules of Civil Procedure to dismiss SIPC's complaint fo alleged legal insufficiency and jurisdictional reasons. This affidavit is respectfully submitted in opposition to that motion.

2. Deponent is informed by SIPC's attorneys of record that Touche Ross' engagements in proceedings under the Securities Investor Protection Act of 1970 ("SIPA") may be relevant to certain aspects of Touche Ross' aforesaid motion, particularly insofar as those engagements indicate Touche Ross' awareness of its obligations to SIPC and of SIPC's structure, functions and objectives. The purpose of this affidavit, therefore, is to set forth certain general information relating to that subject.

3. To date, pursuant to section 6(b)(1)(A) of SIPA Touche Ross has been engaged as the accounting firm by various

trustees in eight proceedings under SIPA. Of these, five were commenced prior to the completion of Touche Ross' audit of Weis Securities, Inc. which is the subject of this action ("Weis Audit").

Touche Ross' Engagement in SIPA Proceedings in The Southern District of New York

4. Before and during the Weis Audit, Touche Ross was involved in two SIPA proceedings in the Southern District of New York, namely, the liquidation of J. R. Radin & Co., Inc. ("Radin") and Kenneth Bove & Co. ("Bove"). The Radin proceeding was commenced by SIPC on March 9, 1972 and the Bove proceeding was commenced by SIPC on May 25, 1972.

5. In the Radin proceeding, the trustee appointed for the liquidation of Radin was William W. Golub, Esq., a member of the law firm Rosenman, Colin, Freund, Lewis & Cohen (the "Rosenman Firm") which also represents Touche Ross in this action. Mr. Golub was appointed on March 9, 1972. With SIPC's approval, Mr. Golub retained Touche Ross as his accountants for the purpose of that proceeding. Annexed hereto are copies of (i) Touche Ross' letter to Mr. Golub dated March 14, 1972 referring to its engagement retention by Mr. Golub, and (ii) Mr. Golub's letter to SIPC dated March 17, 1972 requesting SIPC's authorization to retain Touche Ross as his accountants. These letters are respectively designated Exhibits A and B.

6. In the Bove proceedings, Mr. Golub was first appointed as temporary receiver on May 25, 1972, and on August 17, 1972 as liquidating trustee. In his capacity as temporary receiver, Mr. Golub engaged Touche Ross as his accountants, and that engagement continued after his appointment as trustee.

Annexed hereto as Exhibit C is a copy of a revised invoice dated August 3, 1972 submitted by Touche Ross to Mr. Golub for services rendered during the month of May 1972. There were numerous other invoices but this particular one establishes that Touche Ross was actively engaged on Mr. Golub's behalf while the Weis Audit was in progress.

7. Deponent is informed by SIPC's Finance Department that the following Touche Ross personnel were engaged on Mr. Golub's behalf in one or more of the capacities indicated in the cases specified:

Name	Capacity	Radin	Bove
Louis Haag	Partner		X
Karl Brunhuber	Manager	X	X
John Burkhardt	Manager		X
Stuart Newman	Manager	X	
Irwin Goldberg	Manager	X	
Joseph Puglisi	Supervisor	X	
Mark Berlin	Supervisor		X
Robert Gubitosi	Senior	X	X
Thomas Hogan	Senior		X
James Reilly	Senior	X	
James Blow	Assistant		X
James Buck	Assistant		X
Bruce Price	Assistant		X
Vincent Criscillo	Assistant	X	

Touche Ross' answers to the plaintiffs' interrogatories dated July 23, 1976 (Answer to Interrogatory No. 2) identify each of the foregoing as persons in Touche Ross' employ who were engaged in the Weis Audit.

8. The Rosenman Firm served as counsel to Mr. Golub in both the Radin and Bove cases.

Other SIPA Proceedings In Which Touche Ross Was Engaged

9. Touche Ross' engagement in SIPA proceedings antedates its engagement in the Radin and Bove matters, as illustrated by the following.

10. Carl Berg'und d/b/a Colonial Investment Securities ("Colonial"). In the Colonial matter, the trustee was appointed on August 6, 1971 by the U. S. District Court for the District of Massachusetts. Annexed hereto as Exhibit D is a copy of Touche Ross' letter to SIPC's General Counsel dated August 11, 1971 wherein it requested approval of its engagement as the trustee's accountant.

11. John Edward & Co. Inc. ("Edward"). In the Edward matter, the trustee was appointed on July 1, 1971 by the U. S. District Court for the District of Massachusetts. Annexed hereto are copies of (i) Touche Ross' letter to the trustee dated September 1, 1971 concerning its engagement by the trustee, (ii) a letter from the trustee's attorneys to SIPC dated September 2, 1971 requesting SIPC's approval of the trustee's engagement of Touche Ross, and (iii) SIPC's letter (by L. W. McChesney) to the trustee's attorneys dated September 7, 1971 which approved Touche Ross' engagement. These are designated as Exhibits E, F. and G.

12. C. H. Wagner & Co. Inc. ("Wagner"). In the Wagner matter, the trustee was appointed on February 28, 1972 by the U. S. District Court for the District of Massachusetts. Annexed hereto as Exhibit H is a copy of Touche Ross' letter to SIPC's General Counsel dated March 16, 1972 concerning the trustee's engagement of Touche Ross in that proceeding.

13. In addition to the foregoing, Touche Ross has served as the accounting firm engaged by trustees in the following cases:

(a) The liquidation under SIPA of Comstock Securities Limited in which the trustee was appointed on November 20, 1972 by the U. S. District Court.

(b) The liquidation under SIPA of First Midwest Investment Corporation in which the trustee was appointed on November 28, 1972 by the U. S. District Court for the Eastern District of Wisconsin.

(c) The liquidation under SIPA of Christian-Paine & Co., Inc. in which the trustee was appointed on April 18, 1974 by the U. S. District Court for the District of New Jersey.

14. Deponent has not ascertained the extent to which Touche Ross personnel who were engaged in the Weis Audit were also engaged in the foregoing six proceedings under SIPA.

WHEREFORE, deponent respectfully prays that the motion of the defendant under Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure be in all respects denied.

WILFRED R. CARON

Sworn to before me
this 3rd day of January, 1977

Notary Public

My Commission Expires September 18, 1981

EXHIBIT A TO AFFIDAVIT OF WILFRED R. CARON.

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

March 14, 1972

Mr. William W. Golub, Trustee
c/o Rosenman, Colin, Kaye,
Petschek, Freund & Emil
575 Madison Avenue
New York, New York 10022

Re: J. R. Radin & Co., Inc.
Liquidation

Dear Mr. Golub:

J. R. Radin & Co., Inc. is being liquidated under the supervision of the Securities Investor Protection Corporation (SIPC). Touche Ross has been retained to assist the Trustee in conducting its investigation of the affairs of J. R. Radin & Co., Inc. and to assist in the liquidation of the debtor.

Our firm has rendered similar services for other related matters and the hourly fee rates previously approved by SIPC are as follows:

Category	* Hourly Rates
Partners	$60-75
Managers	33-40
Supervisors	27-30
Seniors	22-25
Staff Assistants	17-20

In accordance with the requirements of SIPC, the rate of compensation must be authorized by the Court. Accordingly, we would appreciate your arranging to secure such approval.

Continued.....

Monthly invoices will be submitted for the time expended during the previous month.

Your cooperation in this matter is appreciated.

Very truly yours,

Sidney Kohleriter

SK:tm

* Hourly rates will not change for a period of one year from the date of this letter.

EXHIBIT B TO AFFIDAVIT OF WILFRED R. CARON.

ROSENMAN COLIN KAYE PETSCHEK FREUND & EMIL

575 MADISON AVENUE NEW YORK, N.Y. 10022

RALPH F. COLIN
STANLEY H. KAYE
ALLAN G. EMIL
WALTER J. PETSCHEK
MAX FREUND
AMBROSE DORSEY
SEYMOUR D. JOHNS
LAWRENCE W. FINO
MURRAY COHEN
WILLIAM W. GOLUB
ANDREW J. SHERMAN
ASA D. SOFOLIN
GILBERT S. COLSON
ARNOLD I. ROTH
GEORGE I. GORDON
LAWRENCE D. BUTTENWIESER
EUGENE L. VOGEL
GERALD WALPIN
MALL DARASCH
H. PAUL DURAN
EDWARD H. COHEN
FLORA SCHNALL

SAMUEL I. ROSENMAN
COUNSEL

MURRAY HILL 8-7000
AREA CODE 212

CABLE ADDRESS
"ROCOKAY NEWYORK"

TELEX: 12-5745

March 17, 1972

Mr. Michael M. Marx
Securities Investor Protection Corporation
485 L'Enfant Plaza Southwest - Suite 2150
Washington, D. C. 20024

Re: John R. Radin & Co., Inc.

Dear Mike:

This letter is to obtain your authorization for me to employ Touche Ross & Co. as my accountants in the above-entitled matter. As the enclosed letter from Touche Ross indicates, their hourly rates, which will remain unchanged for at least one year, are as follows:

Category	Hourly Rates
Partners	$60-75
Managers	33-40
Supervisors	27-30
Seniors	22-25
Staff Assistants	17-20

Please indicate that you authorize me to retain Touche Ross at the rates hereinabove set forth by signing and returning to me the enclosed carbon copy of this letter.

Yours very truly,

William W. Golub

William W. Golub
Trustee

WWG:nr
Enclosure

EXHIBIT C TO AFFIDAVIT OF WILFRED R. CARON.

TOUCHE ROSS & CO.

1633 BROADWAY
NEW YORK, NEW YORK 10019

August 3, 1972

William Golub, Temporary Receiver
Kenneth Bove & Co., Inc.
c/o Rosenman Colin Kaye Petschek
Freund & Emil
575 Madison Avenue
New York, N. Y. 10022

FOR SERVICES RENDERED

REVISED INVOICE

Re: Temporary receivership for the month of May 1972:

	Hours	Rate	Amount
Partners:			
A. Hills (Boston)	4	$75	$ 300.00
I. Bloom (Miami)	2	55	110.00
Managers:			
K. Brunhuber (New York)	5	40	200.00
J. Burkard (New York)	22½	40	900.00
J. Parent (Boston)	1½	35	52.50
Staff Assistants:			
T. Hogan (New York)	5	17	85.00
B. Rosen (Miami)	7	16	112.00
Out of pocket expenses			29.00
			$1,788.50

EXHIBIT D TO AFFIDAVIT OF WILFRED R. CARON.

TOUCHE ROSS & CO.

RECEIVED
AUG 13 1971
S. I. P. C.

ONE BOSTON PLACE
BOSTON, MASSACHUSETTS 02108

August 11, 1971

Mr. Theodore Focht
S.I.P.C.
Suite 104, Astral Building
955 L'Enfant Plaza, S.W.
Washington, D.C.

Dear Mr. Focht:

Re: SEC vs. Carl Berglund
d/b/a/ Colonial Investment Securities

Mr. Gordon Martin has asked me to write you concerning the possible appointment of this firm as accountants for the newly appointed trustee in the above case. As you may know, we have acted in that capacity for the predecessor receivers and have accumulated a good deal of material concerning the case.

Our present hourly billing rates by category of staff are as follows:

Partner	$60-75
Supervisor	$27-30
Senior	$22-25
Staff Assistant	$17-20

As far as this trusteeship is concerned, we would not plan to modify these rates prior to August 31, 1972.

If you desire further information, please call me collect at (617) 742-9400.

8/13/71

Very truly yours,

A. R. Hills

Arthur R. Hills

OK for mee

ARH:mm

Exhibit "D"

Ted Focht
8/13/71
T.H.

EXHIBIT F TO AFFIDAVIT OF WILFRED R. CARON.

GADSBY & HANNAH
1700 PENNSYLVANIA AVENUE N.W.
WASHINGTON, D.C. 20006
202 [illegible]

75 FEDERAL STREET
BOSTON, MASS. [illegible]
[illegible]

CABLE ADDRESS: [illegible]

Boston, Massachusetts

September 2, 1971

RECEIVED
SEP 7 1971
S. I. P. C.

Securities Investor Protection Corporation
955 North L'Enfant Plaza, S. W., Suite 104
Washington, D. C. 20024

Re: John, Edward & Co., Inc.

Gentlemen:

On behalf of George L. Manias, trustee for the liquidation of John, Edward & Co., Inc., I request approval for the employment of Touche Ross & Co., Boston, in connection with the liquidation. Enclosed is a copy of a letter from Touche Ross & Co. with their assurance that the hourly rates scheduled therein will not be increased for a period of one year from September 1, 1971.

Very truly yours,

Charles H. Morin

Charles H. Morin
Attorney for the Trustee
in Liquidation of
John, Edward & Co., Inc.

CHM/kac
Enclosure

cc: George L. Manias
Arthur R. Hills

EXHIBIT G TO AFFIDAVIT OF WILFRED R. CARON.

September 7, 1971

Charles H. Morin, Esquire
Gadsby & Hannah
1700 Pennsylvania Avenue, N. W.
Washington, D. C. 20006

Re: John, Edward & Co., Inc.

Dear Mr. Morin:

We have reviewed the proposed engagement letter dated September 1, 1971, received from Touche Ross & Co. which you forwarded to SIPC on September 2, 1971.

We approve the engagement of Touche Ross & Co. for the liquidation work required for John, Edward & Co., Inc.

Very truly yours,

Lloyd W. McChesney
Vice President - Finance

LWM:py
Copy to Mr. Arthur R. Hills
George L. Manias, Esquire

EXHIBIT H TO AFFIDAVIT OF WILFRED R. CARON.

TOUCHE ROSS & CO.

ONE BOSTON PLACE
BOSTON, MASSACHUSETTS 02108

March 16, 1972

Mr. Theodore Focht
S.I.P.C.
Suite 104, Astral Building
955 L'Enfant Plaza, S.W.
Washington, D. C.

Dear Mr. Focht:

Re: SEC vs. C.H. Wagner & Co., Inc.

Mr. Thomas Carens has asked me to write you concerning the appointment of this firm as accountants for the trustee in the above case. As you know, the work would involve participation by several of our offices, and we are, therefore, unable to quote you hourly billing rates with as small spreads as we have quoted on previous S.I.P.C. engagements. The wider spreads quoted below result from variations in billing rates in various parts of the country.

The hourly billing rates for this engagement by category of staff are as follows:

Partner	$60-75
Manager	$33-45
Supervisor	$26-35
Senior	$22-26
Staff Assistant	$16-20

Billings will be at the normal rates for the offices involved whether the individual is at the bottom or top end of the above scale. We also agree to make no changes in the above rates for a period of one year from the date of this letter.

Very truly yours,

Arthur R. Hills

Agreed and approved by the SIPC

ARH:mm

Exhibit "H"

APPROVED:

cc: Thomas Carens

THEODORE H. FOCHT

REPLY AFFIDAVIT OF ARNOLD I. ROTH IN SUPPORT OF MOTION TO DISMISS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, Plaintiffs,	76 Civ. 1981 (I.B.W.)
-against-	REPLY AFFIDAVIT
TOUCHE ROSS & CO., Defendant.	

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

ARNOLD I. ROTH, being duly sworn, deposes and says:

1. On January 20, 1977, after plaintiffs had served their opposing papers herein, the Second Circuit decided Lank v. New York Stock Exchange (Docket No. 76-7243). For the convenience of the Court, and because Lank is controlling here (a controlling effect which is conceded by plaintiffs, who rely heavily upon the reversed District Court decision) and requires dismissal of plaintiffs' "causes of action" under Section 17 of the 1934 Act, a copy of the Second Circuit's slip opinion is annexed hereto as Exhibit 1.

2. Among the pertinent materials for replying to plaintiffs' opposing papers are the annual reports of plaintiff SIPC. Consequently, pertinent portions of plaintiff SIPC's First Annual Report (1971), Second Annual Report (1972), Third Annual Report (1973) and Fifth Annual Report (1975) are annexed hereto as, respectively, Exhibits 2, 3, 4 and 5.

3. Arguing against the alternative relief sought by defendant Touche Ross -- viz., a stay of all proceedings in this action, to the extent that it is not dismissed, pending determination of plaintiffs' earlier commenced and almost identical State Court Action -- plaintiffs seek (by means of the moving affidavit of Clarence Fried) to create the misleading impression that the State Court Action had to be commenced for protection against the statute of limitations, that the State Court Action has been dormant since its inception, and that this action is substantially more advanced than the State Court Action. Brief recitation of the facts demonstrates the misleading nature of plaintiffs' contentions.

(a) Mr. Fried asserts that the State Court Action was instituted "as a precautionary measure to preserve the plaintiffs' state claims from the bar of the statute of limitations" (Fried Aff. ¶5). However, by the time the State Court Action was commenced on July 3, 1975, plaintiffs and defendant Touche Ross had already entered into the first of the series of letter agreements by which even Mr. Fried concedes "all applicable statutes of limitations and time limits . . . were tolled and extended". That first letter agreement was dated July 2, 1975, and was supplemented by further letter agreements dated December 19, 1975 and March 25, 1975. Since Mr. Fried attaches to his affidavit only the last of those letter agreements, the first two are annexed hereto as, respectively, Exhibits 6 and 7. In this connection, I call the Court's attention to the fact that Mr. Fried misstates the operative language (which is the

same in all three letters) when he quotes it as saying "all applicable statutes of limitations and time limits which had not run by July 2, 1976 were tolled and extended". The misstatement by Mr. Fried is with respect to the underlined date, for in each of the letter agreements the actual date is not July 2, 1976, but instead, July 2, 1975, the day before the commencement of the State Court Action. Thus, the parties had agreed prior to the commencement of the State Court Action to toll and extend all applicable statutes of limitations, and the commencement of the State Court Action for that purpose was (and was known to plaintiffs to be) unnecessary.

(b) In asserting that the State Court Action "has been practically dormant", Mr. Fried erroneously asserts that defendant Touche Ross "has neither answered nor moved" therein and, while conceding that defendant Touche Ross "propounded a set of interrogatories on . . . and . . . served notices to take the depositions of each of the plaintiffs", misleadingly suggests that defendant Touche Ross withdrew those interrogatories and notices without more (Fried Aff. ¶7). In fact, defendant Touche Ross not only served its extensive interrogatories and its notices to take depositions (referred to in my moving affidavit), but also moved to dismiss portions of the complaint in the State Court Action. A copy of the defendant Touche Ross' notice of motion to dismiss is annexed hereto as Exhibit 8.

(c) To support the suggestion that this action is more advanced than the State Court Action, Mr. Fried misleadingly asserts that defendant Touche Ross "has already

partially answered a set of interrogatories propounded by the plaintiffs herein" (Fried Aff. ¶8). However, defendant Touche Ross' answers do not represent the advancement of this action which plaintiffs would suggest. After the complaint in this action was served, defendant Touche Ross sought an extension of its time to move or answer in order to be able adequately to deal with the numerous and complex issues which, as it informed plaintiffs, it intended to raise on a motion to dismiss. Plaintiffs' attorneys were unwilling to grant the necessary and concededly reasonable extensions without demanding as a quid pro quo a concession from defendant Touche Ross that they could, inter alia, serve certain interrogatories. Although defendant Touche Ross expressly objected to any discovery taking place prior to determination of the motion to dismiss and to the exaction of the quid pro quo, it was forced to agree (in order to obtain plaintiffs' agreement to the necessary extension) that plaintiffs could, inter alia, serve interrogatories which "shall be of a preliminary or structural nature, and shall not seek information on the substance of the causes of action alleged in the complaint". Contrary to the express requirements of the stipulation embodying that agreement, a copy of which is annexed hereto as Exhibit 9, and as defendant Touche Ross had feared, the interrogatories actually served by plaintiffs sought extensive information which was non-preliminary and was of a substantive nature. Despite the improprieties of the interrogatories, defendant Touche Ross responded to them by answering them to the extent that they were within the scope of the stipulation and otherwise proper, and by objecting to them to the

extent that they were beyond the scope of the stipulation or otherwise improper. The answers, which primarily identify certain personnel of and documents issued by defendant Touche Ross, are of the most "preliminary" nature, and do not go to the substance of the issues in this action. The answers to the interrogatories do not constitute any substantial start on discovery, and no other discovery has occurred in this action.

(d) By October 1976, the parties hereto were involved in a number of procedural and substantive motions in this action and the State Court Action. Defendant Touche Ross had made the present motion to dismiss this action. Defendant Touche Ross had made its motion to dismiss portions of the State Court Action. Plaintiffs, seeking to whipsaw defendant Touche Ross on discovery, had moved in this action to compel defendant Touche Ross to further answer their improper interrogatories, while at the same time moving in the State Court Action to block defendant Touche Ross from obtaining the discovery sought by its interrogatories and notices of depositions therein. In late October 1976, the parties agreed that all proceedings in this action and the State Court Action should be held in abeyance pending the resolution of the present motion to dismiss this action, and effectuated that agreement by entering into the two stipulations dated October 28, 1976 and annexed to Mr. Fried's affidavit as Exhibit B.

4. The point of the foregoing is that this action is no further advanced than the State Court Action, and plaintiffs mislead in suggesting to the contrary. Consequently,

the relative procedural postures do not militate against the stay and, in light of the fact that the State Court Action was commenced long before this action, actually weigh in favor of the stay. Other pertinent factors which also dictate that the stay be granted are discussed in detail in defendant Touche Ross' moving papers and include such overriding considerations as the fact that plaintiffs' claims involve basically questions of common law negligence and malpractice, and the fact that such questions are more appropriately to be resolved by the State courts.

5. A decision pertaining to the question of a stay is Finkelstein v. Wolf, a summary of which is reported at C.C.H. Fed. Sec. L. Rep. ¶94,885 (1974). A full copy of that decision is annexed hereto as Exhibit 10.

ARNOLD I. ROTH

Sworn to before me this
day of , 1977.

Notary Public

MARC ROWIN
NOTARY PUBLIC, State of New York
No. 31-4513336
Qualified in New York County
Commission Expires March 30, 1977

Exhibit 1 to the Reply Affidavit of Arnold I. Roth is this Court's Decision in Lank v. New York Stock Exchange which is not included herein but is reported at 548 F.2d 61,

EXHIBIT 2 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

SIPC

SECURITIES INVESTOR PROTECTION CORPORATION

FIRST ANNUAL REPORT

1971

HIGHLIGHTS

This report by the Securities Investor Protection Corporation covers the period from its inception on December 30, 1970 through March 1972. In the space of 15 months, through the efforts of its members in providing financial support and the efforts of the entire industry and the regulatory and self-regulatory organizations in searching for and attempting to remedy some of the causes of failures of broker-dealer firms, SIPC has been established and substantially funded as a new instrument for the protection of customers of broker-dealer firms.

In the words of the report[1] of the Senate Committee on Banking and Currency, SIPC ". . . . is intended to serve several purposes: to protect individual investors from financial hardship; to insulate the economy from the disruption which can follow the failure of major financial institutions; and to achieve a general upgrading of financial responsibility requirements of brokers and dealers to eliminate, to the maximum extent possible, the risks which lead to customer loss."

SIPC was created by the Securities Investor Protection Act of 1970, a federal statute which became effective December 30 of that year. It is a non-profit membership corporation. While it is not an agency or instrumentality of the United States Government, it has authority to borrow from the United States Treasury (see page 17) and its directors are appointed by "government" (see page 12).

The membership of SIPC is composed of all brokers or dealers registered under the Securities Exchange Act of 1934 and all members of a national securities exchange (other than those whose business consists exclusively of one or more of four categories (see page 11). At the end of 1971 there were approximately 4,000 SIPC members.

SIPC's primary purpose is to provide financial protection within the limits specified in the Act for customers of failing brokers or dealers who are members of SIPC. The protective provisions of the Act work in various ways for the benefit of customers of failing firms. For example, if a customer's fully paid securities are held by a broker-dealer firm which fails, these securities, if they are on hand and identifiable as the customer's fully paid for property, are to be returned to the customer without limit as to their dollar value.

If a customer has a net equity claim on the date a liquidation proceeding begins (see "filing date," p. 22), SIPC shall, if necessary, advance funds through the trustee conducting the liquidation in amounts necessary to cover the customer claims up to a maximum of $50,000 for each customer except that in the case of claims for cash, as distinct from securities, not more than $20,000 may be paid with funds advanced by SIPC. It should be noted that SIPC does not protect a customer from the decline in price resulting from an unwise purchase or an adverse movement in market prices. It is intended to protect the customer, in the event his broker-dealer firm fails, against the loss of securities or cash balances owing to him on the filing date, based on the situation as it exists on that date, up to the above mentioned statutory limits. Customers also may receive certain benefits under the Act as a result of SIPC's advances if necessary to complete certain types of open contractual commitments which had been entered into by the failing firm in the ordinary course of business in which customers had an interest.

The funds for purposes of protecting customers of SIPC members are provided by assessments based on a percentage of the gross revenues from the securities business of the SIPC member firms. These assessments are currently at the rate of ½ of 1 percent of each member's gross revenues from the securities business. SIPC receives no appropriation of government funds.

It is expected that the SIPC fund will be accumulated until it approximates $150 million exclusive

[1] Report No. 91–1218 at p. 4.

of lines of credit. The rate at which this can be accomplished, of course, depends upon many circumstances, including the health of the securities industry, the demands upon the fund for the liquidation of SIPC member firms, and the flow of assessments. As the fund increases in size, SIPC may vary assessment rates based on various considerations, including the type of business done and risk and experience factors. It is expected that it will be several years before varying rates can be established.

The SIPC fund at any time consists of cash, United States Government or agency securities and confirmed lines of credit. At the end of 1971 the fund amounted to approximately $91 million, exclusive of approximately $5.7 million received after January 1, 1972, representing assessments on 1971 fourth quarter revenues. $65 million of the fund consisted of a confirmed line of credit expiring October 1976 with a group of 29 banks. Under the terms of the agreement the amount of the available credit declines each year, and on April 1, 1972 the credit was reduced to $55 million.

If necessary for the protection of the Nation's securities markets, presumably only in the event of a crisis of extreme severity, SIPC may borrow from the Securities and Exchange Commission which, in turn, will issue notes to the United States Treasury in amounts up to $1 billion. In the event of such a borrowing, assessments on SIPC members would be applied to the repayment of the loan; except if the plan of repayment based on assessments would not repay the loan within a reasonable time, the Commission may impose a transaction fee of not exceeding 1/50 of 1 percent of the purchase price of equity securities in transactions in the exchange or over-the-counter markets.

The liquidation procedures of the Act represent a blending of many provisions of the Bankruptcy Act and the special provisions of the 1970 Act.

SIPC does not, itself, liquidate a failing firm. Upon receipt of a notice that a SIPC member firm is in financial difficulty or approaching financial difficulty, and upon the occurrence of certain other events specified in the Act, SIPC may apply to a federal court for the appointment of a trustee. If the court grants the application, the trustee will take possession of the premises and property of the debtor firm and carry out the applicable statutory objectives. In brief, these are to:

a. return specifically identifiable property to customers entitled thereto;
b. distribute to customers the fund of cash and securities held for the account of customers, employing SIPC funds advanced for this purpose to the trustee, if necessary;
c. operate the business of the debtor to complete open contractual commitments made in the ordinary course of business by the debtor firm where customers have an interest; and
d. liquidate the business of the debtor firm.

In connection with the foregoing, rights of subrogation may be enforced.

The Act specifically precludes the reorganization of a debtor firm. Accordingly, SIPC funds cannot be used to rehabilitate a firm, reorganize it, or operate it in the hope it may recover. The trustee has no choice but to liquidate and, once that process has started, it probably is irreversible.

During the year 1971 and through March 31, 1972 SIPC did not apply for the appointment of a trustee for a member of any exchange.

On March 31 there were thirty-nine firms in liquidation under the 1970 Act. All of these were NASD members.

Details concerning these firms appear on Appendix III of this report. The basic causes of failures of these firms are summarized on pages 27-28.

It is estimated by the trustees that $7.8 million of SIPC funds may be required to satisfy the claims of customers of these firms. It is not possible at this time to project estimated total costs to SIPC, including administrative costs, for these liquidations. As of the end of March SIPC had advanced $600,000 to trustees to complete open commitments and to pay customers' claims and administrative expenses.

Finally, SIPC is not a regulatory agency and does not represent the addition of a new regulatory layer in the structure of the securities industry. SIPC has only a small staff. It relies on the exchanges, the National Association of Securities Dealers, Inc. and the Commission for its information. It is subject to oversight by the Commission and, of course, the Congress. SIPC has an advisory role in relation to the agencies just mentioned in matters relating to financial responsibilities of SIPC member firms and their reporting and inspection procedures and, in the exercise of that role, has commented upon a number of rule proposals published by the Commission and the NASD during the past twelve months.

In October 1971 SIPC published a brochure entitled "An Explanation of the Securities Investor Protection Act of 1970" for distribution by SIPC member firms to their personnel and their customers. The questions and answers contained in that brochure are reproduced on the following pages.

SIPC BROCHURE "An Explanation of the Securities Investor Act of 1970"

PROTECTION TO CUSTOMERS

NOTE:

This brochure attempts only a brief summary of some of the provisions of a new and complex statute. It presents the views of the staff with respect to some of the questions asked most frequently concerning SIPC and the Act. It should be recognized that definitive answers to many questions which may arise concerning the application of the Act to various persons or situations will depend upon future interpretations, administrative decisions, and court actions.

No person may by any representation, interpretation or otherwise affect the extent of the coverage provided customers' accounts by the Act or the rules adopted thereunder by SIPC or the SEC.

The text of this brochure has been made available by SIPC as of October, 1971. Changes therein may be made only by SIPC.

1. What is the principal purpose of SIPC?

SIPC's major function is to provide funds for use, if necessary, to protect the customers of a SIPC member firm in the event the firm is liquidated under the provisions of the 1970 Act.

2.. Who are members of SIPC?

Except for certain excluded categories of firms, all broker-dealers registered with the Securities and Exchange Commission and all members of national securities exchanges are automatically members of SIPC. Four kinds of firms are specifically excluded from automatic membership—namely, firms engaged exclusively in the distribution of mutual fund shares or variable annuities or the business of insurance or furnishing investment advice to registered investment companies or insurance company separate accounts. Excluded firms, however, may be able to apply for membership if rules for this purpose are adopted by SIPC.

A SIPC member firm is permitted to display a distinctive sign indicating its membership.

3. What is the basic protection afforded a customer by SIPC?

In the event SIPC determines that the liquidation of a member firm is necessary under the 1970 Act, SIPC will apply to an appropriate Federal district court for the appointment of a Trustee to supervise the liquidation.

The Trustee will undertake to return to customers out of available assets securities that can be "specifically identified" as theirs. In general, these will be fully paid securities in cash accounts and excess margin securities in margin accounts which have been set aside as the property of customers as required by any applicable rules of the stock exchanges, the National Association of Securities Dealers, Inc., or the SEC.

In addition, if necessary, SIPC will advance funds to the Trustee to enable him to pay the remaining claims of each customer up to $50,000, except that in the case of claims for cash, as distinct from securities, not more than $20,000 may be paid with funds advanced by SIPC.

The Act does not, however protect customers against losses arising from fluctuations in securities prices.

4. What kinds of property are protected under the Act?

Basically customers' cash and securities are covered. Other property, such as commodities accounts, is not protected by the Act.

5. What happens if a customer's claims exceed the maximum allowable limits of SIPC coverage?

The customer becomes a general creditor of the firm in liquidation as to the remainder of his claim. Any recovery would depend upon the remaining assets of the firm and the amount of the claims of customers and other creditors.

6. May a customer have more than one protected account with the same SIPC member firm?

Yes, under certain circumstances. A customer who holds accounts with the same SIPC member in separate capacities, for example one account as an individual and another as a Trustee for another person under certain trust arrangements, would be deemed a different customer in each capacity. A customer having several different accounts must be acting in a bona fide separate capacity with respect to each.

All such accounts, however, must meet the requirements of rules of SIPC in effect from time to

time in addition to conforming to the policies and procedures of the securities firm.

A person who in a single capacity has several different accounts with the same firm, e.g., cash and margin, would be considered a single customer for purposes of applying the $50,000/$20,000 limit.

A customer having or proposing to have more than a single account with the same firm is advised to discuss his plans with representatives of the firm and his own attorney.

7. May a customer have protected accounts with more than one SIPC member firm?

Yes. A customer may have accounts with several different members. The account with each member would be protected in the manner and within the limits described in answers 6 and 8.

8. What are some examples of the application of the limits of SIPC protection to claims of customers?

a. The customer has a claim for $40,000 in securities. The claim would be paid in full.
b. The customer has a claim for $40,000 in securities and $20,000 in cash. All but $10,000 would be covered.
c. The customer has a claim for $15,000 in securities and $25,000 in cash. The claim would be covered to the amount of $35,000.
d. The customer has a claim for $60,000 in securities and $40,000 in cash. The claim would be covered to the amount of $50,000.
e. The customer has claims for $40,000 in securities in his own account and for $35,000 in securities in a joint account with his wife, as to which each has full authority. The wife also has an account in her own name in which there is a claim for $40,000 in securities. All three claims would be fully covered.

9. How is a customer's claim for securities valued?

Claims are valued as of the date on which the judicial proceedings involving the SIPC member firm were commenced (filing date). The Act provides that, to the greatest extent practicable, claims for securities should be discharged by the delivery of such securities in kind.

As a result of fluctuations in values of securities between the filing date and the date of distribution by the Trustee, a customer may receive securities with a current market value which differs materially from their value on the filing date. Likewise, cash paid for securities claims determined as of the filing date may differ from the market value of equivalent securities as of the date of payment.

10. How will customers of a firm placed in liquidation learn of this development?

Promptly after his appointment, the Trustee will cause notice of the commencement of the liquidation proceedings to be published. At the same time, he will cause a copy of such notice to be mailed to all customers of the firm as their addresses appear from its books and records. Customers of the firm should respond promptly with any claims they may have against the firm.

11. To whom does a customer of a SIPC member firm in liquidation submit his claim?

Directly to the Trustee. SIPC is not authorized to settle disputes or to make payments of any kind directly to customers and can advance funds only to the Trustee. The Trustee will liquidate the business and make distributions to the customers subject to the approval of the court.

12. Who runs SIPC?

SIPC is managed by a seven-member Board of Directors. Five of the members are appointed by the President of the United States (subject to Senate confirmation), of whom two are representatives of the general public and three are selected from the securities industry. The public members serve as Chairman and Vice-Chairman. In addition, one member is designated by the Secretary of the Treasury and another by the Federal Reserve Board from among their respective officers and employees.

The Securities and Exchange Commission has certain oversight and regulatory functions with respect to SIPC, particularly in connection with matters relating to assessments and any borrowing from the U.S. Treasury.

13. Who is responsible for financing SIPC?

The securities industry, through assessments by SIPC on its member firms, is the principal source of SIPC funds. SIPC members are assessed a percentage of their gross revenues from the securities business. It is expected that over a period of time the fund will be built to a total of not less than $150,000,000 or such other amount as the Commission may determine in the public interest.

14. What is the assessment schedule for SIPC members?

Continuing assessments of not less than one-half of one percent of a firm's gross revenues from the securities business are to be levied until a speci-

fied sum is reached. Thereafter, SIPC is expected to adjust assessments for different members or classes of members based on experience, risks and other factors. Under certain circumstances, assessments may exceed one-half of one percent but not more than one percent of a firm's gross revenues from the securities business during any twelve-month period.

15. Does SIPC have access to emergency financing in the event industry assessments prove insufficient?

Yes. Under such circumstances, SIPC may borrow up to $1 billion from the U.S. Treasury through the SEC if the Commission determines that such a loan is necessary for the protection of customers and the maintenance of confidence in the United States securities markets. SIPC must present a plan which provides as reasonable an assurance of prompt repayment as may be feasible under the circumstances. If the Commission determines that assessments on the industry would not satisfactorily provide for the repayment of the loan, it may impose a transaction fee on purchasers of equity securities at a rate not exceeding 1/50 of 1% of the purchase price ($.20 per $1,000.00). This fee would not apply to transactions of less than $5,000.

16. Who is a "customer" for purposes of a "liquidation proceeding" under the 1970 Act?

"Customers" of a firm in liquidation are persons who, on the filing date, have claims on account of securities received, acquired or held by the firm from or for the account of such persons (1) for safekeeping, (2) with a view to sale, (3) to cover consummated sales, (4) pursuant to purchases, (5) as collateral security, or (6) by way of loans of securities to the firm. Persons who have deposited cash with a firm for the purpose of purchasing securities are also considered as "customers."

A person is not regarded as a "customer" under the Act to the extent that he has a claim for property which by contract, agreement, or understanding, or by operation of law, is part of the capital of the firm or is subordinated to the claims of creditors of the firm.

Commodities accounts are excluded from coverage under the Act.

17. Which customers, if any, of a firm in liquidation would not be eligible for protection from SIPC funds?

SIPC may not advance funds to the Trustee to pay any claims of any customer who is: (1) a general partner, officer, or director of the firm; (2) the beneficial owner of five percent or more of any class of equity security of the firm (other than certain nonconvertible preferred stocks) or (3) a limited partner with a participation of five percent or more in the net assets or net profits of the firm. See also the answer to question 18.

18. Does SIPC afford any protection to customers of other firms which have had transactions with a firm being liquidated?

Yes, it does, in two respects. First, if a firm has open securities transactions on the filing date, SIPC is authorized to advance funds to the Trustee to complete certain of these transactions. The purpose is to minimize the disruption caused by the failure of a broker-dealer by precluding the possible "domino effect" of such a failure on other securities firms. Second, SIPC will advance funds, up to the $50,000/$20,000 limits for each separate customer of a broker-dealer or bank, to the extent that the claims of such broker-dealer or bank arise from transactions for its customers.

19. Who examines the financial condition of firms that are members of SIPC?

SIPC does not have an inspection or examining authority or function. Thus, the stock exchanges and the National Association of Securities Dealers, Inc. are the "examining authorities" with respect to their members. The Securities and Exchange Commission is the "examining authority" with respect to members of SIPC which are not members of an exchange or the NASD.

20. What is the explanation for the $20,000 limitation on the coverage of claims for cash?

Three agencies of the Federal Government currently observe similar limitations with respect to accounts which they respectively insure. They are the Federal Deposit Insurance Corporation, established by Congress in 1933 to insure bank deposits and thereby assist in maintaining public confidence in the nation's banking system; the Federal Savings and Loan Insurance Corporation, established by Congress for much the same purpose in 1934; and more recently, the National Credit Union Administration's share insurance program, authorized in October, 1970.

vances by the Corporation, customers who are partners, officers, directors or substantial stockholders of a broker-dealer in liquidation.

This memorandum appears as Appendix II of this report.

The extent to which SIPC must rely upon existing regulatory and self-regulatory organizations and procedures is demonstrated by a brief review of the manner in which the system has operated in a typical case.

Under existing regulations of the Commission, the exchanges and the NASD, financial and other reports are submitted by broker-dealer firms to the self-regulatory organization to which they belong, i.e., the National Association of Securities Dealers, Inc. or one or more of the national securities exchanges, or the Securities and Exchange Commission. The firms, likewise, are subject to inspections by the examiners of one or more of these organizations. When it appears to the Commission or any self-regulatory organization that a broker or dealer is in or is approaching financial difficulty, SIPC is to be notified immediately.

If SIPC determines that any member has failed or is in danger of failing to meet its obligations to customers and that there exists one or more of the conditions specified below, SIPC, upon notice to the member, may apply to an appropriate federal district court for a decree adjudicating that the customers of the member are in need of the protection provided by the Act. The court shall grant the application and issue a decree if it finds that the member—

a. is insolvent within the meaning of Section 1(19) [7] of the Bankruptcy Act, or is unable to meet its obligations as they mature, or

b. has committed an act of bankruptcy within the meaning of Section 3 of the Bankruptcy Act,[8] or

c. is the subject of a proceeding pending in any court or before any agency of the United States or any state in which a receiver, trustee, or liquidator for such member has been appointed, or

d. is not in compliance with applicable requirements under the 1934 Act or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

e. is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

Members of SIPC file their financial statements and reports with the Commission or one or more of the self-regulatory agencies, and the firms are inspected or examined by the personnel of these agencies. SIPC does not, and it was intended that it should not, become involved in activities which duplicate or become pyramided upon the existing reporting and inspection machinery. Accordingly, SIPC considers information supplied by the staff of the Commission or one of the self-regulatory agencies, or both, as well as pertinent information from any other source bearing on the question of whether a firm is in or is approaching financial difficulty. SIPC's principal concern in most instances is with the question of the probable ability of a firm, even if in financial difficulty, to meet its obligations to public customers. At all times between receipts of a notice that a firm is in or approaching financial difficulty, until the firm recovers or is otherwise dealt with, the principal judgment to be made by SIPC has to do with the threat of danger to customers and their need for the protections of the Act. In every case one or more of the five conditions above specified must exist as a prerequisite to filing an application for the appointment of a trustee.

In most of the cases in which SIPC has filed applications, its action has followed or been concurrent with the Commission's application for an injunction and the appointment of a receiver. Typically, these

[7] "(19) A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts;"

[8] "§ 3. Acts of Bankruptcy. a. Acts of bankruptcy by a person shall consist of his having (1) concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 67 or 70 of this Act; or (2) made or suffered a preferential transfer as defined in subdivision a of section 60 of this Act; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt."

actions by the Commission have been based on alleged violations of the net capital rules or the absence of or such inadequacy of books and records as to make impossible a determination that the firm is in compliance with the financial responsibility rules. Increasingly in recent months, SIPC has appeared in court with the Commission and has requested the appointment of a trustee concurrently with the Commission's request for an injunction when the action of the Commission would establish one or more of the five statutory conditions mentioned above. There have been two instances* in which SIPC applied for the appointment of a trustee on the basis of the information supplied by the Commission and the self-regulatory organization where no court action was sought by the Commission. In other cases SIPC has delayed filing its application for a period after the issuance of an injunction or restraining order and the appointment of a receiver on application by the Commission. Thus SIPC has not requested the appointment of a trustee until there appeared to be no reasonable doubt that customers would need the protection of the Act even though the Commission was prepared to go forward at an earlier date with its own action pursuant to its own enforcement policies. This situation could arise in at least four ways.

1. A violation of the net capital rule might not portend as serious a situation from the point of view of customer protection as originally feared. This rule basically is a test of liquidity as of a particular time. It does not necessarily follow that a temporary or possibly inadvertent failure to comply with a required condition of liquidity at the particular time at which a computation is made makes losses to customers inevitable.
2. On some occasions additional capital is invested in the firm or it is determined that adjustments can be made correcting the capital deficiency.
3. In some cases it develops that the firm has no public customers.
4. In some situations a firm will propose as an alternative to a SIPC liquidation that it will self-liquidate or will liquidate under the supervision of one of the self-regulatory organizations without loss to customers.

If in fact there is no real danger to customers SIPC should not seek an adjudication and the appointment of a trustee. This is so because SIPC can only liquidate; it may not reorganize or furnish funds for the rehabilitation of a firm. Once a liquidation proceeding has begun it is unlikely that the process can be stopped or reversed without the rights of others having been prejudiced. Accordingly, it is important that SIPC not enter a case unless it is clear that protection of customers requires it.

The system of relying upon a flow of information from the field offices of the National Association of Securities Dealers, Inc., the Commission and the examiners of the exchanges, through the central offices of these organizations to SIPC, at times has produced delays. These arise partly because of the number of people involved, the geographic dispersion of the industry, problems of communication caused by the need to coordinate the work of two or more agencies, and the frequent inability to secure up-to-date and reliable information because of the inadequacies of records or the ignorance or uncooperative attitudes of principals. Delays of this character are being reduced as procedures are developed and the many persons involved become familiar with a new and complex Act.

A principal problem in many cases arises from the fact that the broker-dealer has failed to establish and maintain on a current basis adequate and reliable records. In some instances it has been necessary to attempt to reconstruct records or rely upon the investigatory efforts of a receiver in order to determine the situation as to customers. The various officers and personnel of the Commission and the self-regulatory organizations consistently have demonstrated a desire to furnish all the help and assistance their resources permit and the efforts of all concerned are to be commended.

Certain other characteristics of the regulatory structure should be mentioned since they bear upon the judgments which must be made in developing an appropriate form of organization and effective and uniform procedures.

SIPC has no control over who or what firms enter the securities business and thus become "members" of SIPC or continue as such.

As indicated above, SIPC has no regulatory authority of the character conferred upon the National Association of Securities Dealers, Inc., the Securities and Exchange Commission and the securities exchanges by the federal securities Acts. As will be explained, however, SIPC has an advisory role to per-

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* Buttonwood Securities, Inc., San Diego, California, and Charisma Securities Corporation, New York, New York.

form in this area and expects to articulate positions on many aspects of the regulatory process as experience is gained with the liquidation problems and the causes of failures. SIPC should be able to make its contributions to fair and competitive markets and the improvement of the regulatory and self-regulatory process even if that is accomplished by persuasion and indirection.

The statute confers no subpoena power on SIPC and does not provide specific authority to conduct investigations.[10] It is evident from the short experience to date, however, that the review of claims, the search for assets, the ascertainment of preferences, the revelation of misconduct, and the determination of whether to sue the principals of firms or others, will require the development and exercise of at least informal investigative procedures to supplement the more formal activities and procedures of the Commission and the self-regulatory authorities and the procedures of the trustees. In other words, although SIPC must carry out its statutory obligations to pay customers claims promptly, SIPC also has an obligation to take all reasonable steps to prevent the disbursal of its funds in payment of false, fraudulent or erroneous claims, or those barred by the Act (all of which have been encountered to date).

It is too early to venture judgments on many aspects of the statutory procedures for protecting the customers of failing firms introduced in the SIPC Act. For example, SIPC does not yet have a basis for reliable estimates of the incidence of failures, the probable demands on the SIPC fund to satisfy customer claims, the costs of estate administration and liquidation or the timing and methods by which assessment rates may be varied to accommodate risk and expense factors. These and many other matters will come more clearly into focus as SIPC gains experience and as precedents are established to guide future action.

SIPC was created at the end of 1970. It began its corporate life without staff or funds of its own. During the period from January through May 1971 SIPC was located in offices made available by the Securities and Exchange Commission at its headquarters office in Washington. The development of appropriate bylaws and the design, drafting and testing of the assessment forms which were mailed to SIPC members in mid-March could not have been accomplished within the periods required by the statute without the help of many people not directly connected with SIPC.

The staffs of the Treasury Department, the Federal Reserve Board and the Commission worked for many weeks on SIPC's bylaws and assessment forms. The industry task force and their counsel gave SIPC every assistance. The officials and staffs of the exchanges, particularly the American Stock Exchange, Inc., the New York Stock Exchange, Inc., and the National Association of Securities Dealers, Inc. also were generous in their efforts to assist SIPC's start-up. The Commission gave SIPC professional, clerical and institutional assistance during the first few months, and has continued thereafter to make available to SIPC's staff the benefit of its staff, experience and facilities when needed. The Commission's Office of Policy Research has been particularly helpful in providing statistical, financial and economic material and research assistance.

SIPC wishes to acknowledge and express its appreciation for the efforts and help of all of these, not only through the "start-up" months, but also for the continuing cooperation, assistance and support without which SIPC could not function. Finally, SIPC wishes to acknowledge the work and cooperative efforts of the trustees and their counsel in a new and difficult field.

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[10] The trustee, of course, has available the processes of the court under the Bankruptcy Act.

LIQUIDATION PROCEEDINGS

General Nature of a SIPC Liquidation

Section 6 of the 1970 Act sets forth the purposes of a proceeding in which a trustee has been appointed, the procedures to be followed, the powers and duties of the trustee, and the rights and priorities of the customers of the debtor firm.

The proceeding is essentially a liquidation proceeding, and the 1970 Act denominates it as such. In order to assure that only a liquidation will take place, Congress provided that, even though the proceeding is to be governed to a very large extent by those provisions of the Bankruptcy Act (11 U.S.C. § 1 et seq.) relating to corporate reorganizations (Chapter X), in no event is a plan of reorganization to be formulated.

The powers and duties of the trustee are quite broad. Section 6(b)(1) gives the trustee the same powers and title with respect to the debtor and its property, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under Chapter X of the Bankruptcy Act would have. In addition, the trustee is given the right to operate the debtor's business so as to complete certain open contractual commitments and, with SIPC approval, to hire and fix the compensation of persons deemed necessary by the trustee for purposes of the liquidation proceedings, all without court approval.

The duties of the trustee, except where inconsistent with the 1970 Act or as otherwise ordered by the court, are the same as the duties of a trustee in bankruptcy.[37]

A liquidation proceeding is to be conducted:

> "in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directly that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive. . . ."

As indicated, where inconsistent with the provisions of the 1970 Act, the Bankruptcy Act does not apply.

[37] However, the trustee in a 1970 Act proceeding has no obligation to reduce securities to money.

As a result, the above quoted provision effects a blending of the 1970 Act, the provisions of the Bankruptcy Act dealing with ordinary bankruptcy (Chapters I to VII, inclusive) and the provisions of the Bankruptcy Act dealing with corporate reorganizations (Chapter X). Such a blending was intended to provide the court and the trustee with the flexibility necessary to the proper conduct of a complex proceeding.[38]

The 1970 Act specifically excludes Section 60e of the Bankruptcy Act which heretofore had governed the bankruptcy liquidation of stockbrokers.[39]

Prior to enactment of Section 60e in 1938, the rights of customers of stockbrokers depended upon the law of the state in which the transactions in question took place, and most cases involved the rights of margin customers. Two doctrines, the "Massachusetts" rule and the "New York" rule, emerged. Under the Massachusetts rule, a broker who carried stock in a margin account for customers was treated as the owner of that stock. The relationship between the parties was said to be that of debtor and creditor, with the customer treated as a general creditor. Under the New York rule, which was followed in most jurisdictions, the relationship was viewed as one of pledgor-pledgee, and a customer who could find similar securities in the possession of the stockbroker or the stockbroker's pledgee could reclaim them. Thus under the New York rule some customers might fare well and others fare poorly, depending simply upon which customers were lucky enough to discover that the stockbroker had in his possession some of the kinds of securities in which they had an interest.

[38] However, the blending also creates certain problems, in that there are conflicts between certain provisions of Chapters I through VII of the Bankruptcy Act and Chapter X of that Act. In addition, the major purpose of a Chapter X proceeding (the rehabilitation of the debtor) is inconsistent with one of the major purposes of a SIPC proceeding (the liquidation of the debtor), while certain provisions of Chapters I through VII which conflict with provisions of Chapter X are perfectly consistent with the purposes of a SIPC proceeding. SIPC is attempting to resolve these conflicts as they appear in any particular case.

[39] Section 60e continues to govern a bankruptcy liquidation of a stockbroker not a member of SIPC.

EXHIBIT 3 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

SECOND ANNUAL REPORT 1972

DECL... ...DEPARTMENT
MAY 7 1973
ROSENMAN COLIN KAYE
PETSCHEK, FREUND & EMIL

HIGHLIGHTS

SIPC was created by the Securities Investor Protection Act of 1970, a federal statute which became effective December 30 of that year. It is a nonprofit membership corporation. It is not an agency or establishment of the United States Government and it receives no appropriation of government funds. Under certain circumstances it has authority to borrow from the United States Treasury (see page 14). The directors are appointed by "government" (see page 8).

The membership of SIPC is composed of all brokers or dealers registered under the Securities Exchange Act of 1934 and all members of a national securities exchange (other than those whose business consists exclusively of one or more of four categories, see page 7). At the end of 1972 there were approximately 3,750 SIPC members.

SIPC's primary purpose is to provide financial protection within the limits specified in the Act for customers of failing brokers or dealers who are members of SIPC. The protective provisions of the Act work in various ways for the benefit of customers of failing firms. For example, if a customer's fully paid securities are held by a broker-dealer firm which fails, these securities, if they are on hand and identifiable as the customer's fully paid for property, are to be returned to the customer without limit as to their dollar value.

If a customer has a net equity claim on the date a liquidation proceeding begins (see "filing date," p. 19), SIPC shall, if necessary, advance funds through the trustee conducting the liquidation in amounts necessary to cover the customer claims up to a maximum of $50,000 for each customer except that in the case of claims for cash, as distinct from securities, not more than $20,000 may be paid with funds advanced by SIPC.

It should be noted that SIPC does not protect a customer from a decline in price resulting from an unwise purchase or an adverse movement in market prices. It is intended to protect the customer, in the event his broker-dealer firm fails, against the loss of securities or cash balances owing to him on the filing date, based on the situation as it exists on that date, up to the above mentioned statutory limits. Customers also may receive certain benefits indirectly under the Act as a result of SIPC's advances, if necessary, to complete certain types of open contractual commitments which had been entered into by the failing firm in the ordinary course of business in which customers had an interest. It also should be noted that SIPC does not have the power to prevent the failure of broker-dealer firms nor can it employ its funds for this purpose.

Funds required for the protection of customers of SIPC members are provided by assessments on the SIPC member firms. These assessments are currently at the rate of ½ of 1 percent of each member's gross revenues from the securities business. The member assessments from December 30, 1970 (inception) through December 31, 1972 aggregate approximately $62,100,000, including $5,670,000 of initial assessments based on 1969 gross revenues.

It is estimated that SIPC advances in the amount of $18-23 million may ultimately be required to meet claims of customers and administrative expenses for the 64 firms in liquidation at December 31, 1972.

It is expected that the SIPC fund will be accumulated until it approximates $150 million exclusive of lines of credit. The rate at which this can be accomplished, of course, depends upon many circumstances, including the health of the securities industry, the demands upon the fund for the liquidation of SIPC member firms, and the flow of assessments. As the fund increases in size, SIPC may vary assessment rates based on various considerations, including the type of business done and risk and experience factors.

The SIPC fund at any time consists of cash, United States Government or agency securities and confirmed lines of credit. At the end of 1972 the fund amounted to approximately $105 million. Estimated assessments for the fourth quarter and adjustments based on 1972 revenues to be received after the year end aggregate $7,310,000. Initially the fund included a confirmed line of credit in the amount of $65 million with a group of 29 banks. Under the terms of the agreement the available credit declines each year, and expires in October 1976. On April 1, 1972 the credit was reduced to $55 million and on April 1, 1973 it was further reduced to $45 million.

If necessary for the protection of customers in the event of a crisis of extreme severity, SIPC may borrow from the Securities and Exchange Commission (SEC) which, in turn, will issue notes to the United States Treasury in amounts up to $1 billion. In the event of such a borrowing, assessments on SIPC members would be applied to the repayment

of the loan; except if the plan of repayment based on assessments would not repay the loan within a reasonable time, the Commission may impose a transaction fee not exceeding one-fiftieth of 1 percent of the purchase price of equity securities in transactions on national securities exchanges and in the over-the-counter markets.

The liquidation procedures of the Act represent a blending of many provisions of the Bankruptcy Act and the special provisions of the 1970 Act.

SIPC does not, itself, liquidate a failing firm. Upon receipt of a notice that a SIPC member firm is in financial difficulty or approaching financial difficulty, and upon the occurrence of certain other events specified in the Act, SIPC may apply to a federal court for the appointment of a trustee. If the court grants the application, the trustee will take possession of the premises and property of the debtor firm and carry out the applicable statutory objectives. In brief, these are to:

a. return specifically identifiable property to customers entitled thereto;
b. distribute to customers the fund of cash and securities held for the accounts of customers, and in advance thereof or concurrently pay to customers moneys advanced by SIPC, if necessary;
c. operate the business of the debtor to complete open contractual commitments made in the ordinary course of business by the debtor firm where customers have an interest; and
d. liquidate the business of the debtor firm.

In connection with the foregoing, rights of subrogation may be enforced.

The Act specifically precludes the reorganization of a debtor firm. Accordingly, SIPC funds cannot be used to rehabilitate a firm, reorganize it, or operate it in the hope it may recover. The trustee has no choice but to liquidate and, once that process has started, it probably is irreversible.

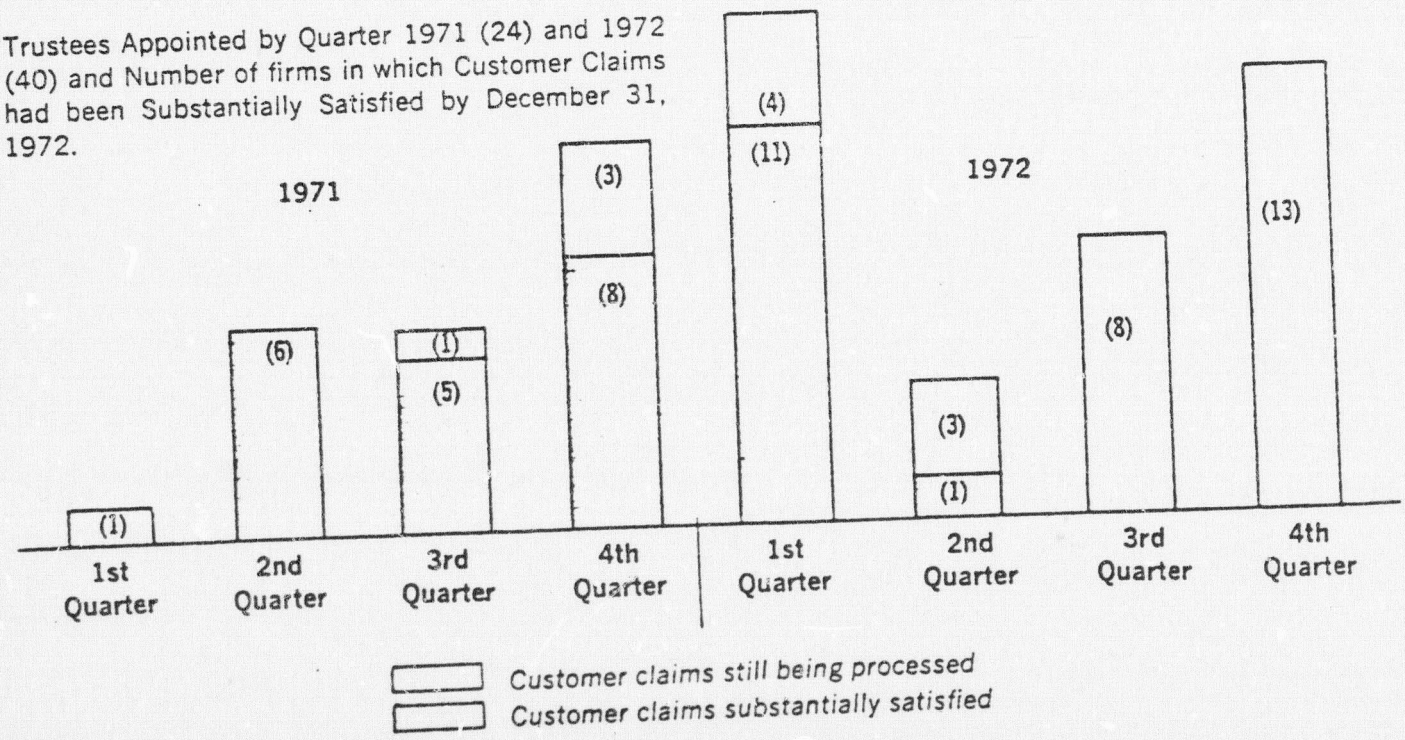
On March 31, 1973 there were 79 firms in liquidation under the 1970 Act. The following table indicates the number of trustees appointed by quarter since the inception of SIPC through March 31, 1973:

	1971	1972	1973
1st Quarter	1	15	15
2nd Quarter	6	4	
3rd Quarter	6	8	
4th Quarter	11	13	
	24	40	15

In addition applications were pending before the Courts in two cases including one in which the district court's denial of SIPC's application was on appeal to the Court of Appeals for the Second Circuit (See page 31).

Of the 64 firms in liquidation on December 31, 1972 trustees had substantially completed distributions of cash and/or securities to public customers in 32 cases as of that date as indicated in the following chart (See Appendix I, Part B for details):

Trustees Appointed by Quarter 1971 (24) and 1972 (40) and Number of firms in which Customer Claims had been Substantially Satisfied by December 31, 1972.



As of December 31, 1972, a total of $16,570,000 in cash and securities at filing date values had been distributed to customers: $9,570,000 from debtors' estates and $7,000,000 from SIPC advances. Approximately $3,500,000 of the latter amount was for customers' credit balances and $3,500,000 was for cash in lieu of missing securities. Details of these distributions are shown in Appendix I.

In the 32 firms where customer claims had been substantially satisfied, a total of $10,690,000 in cash and securities at filing date values had been distributed: $6,300,000 from debtors' estates and $4,390,000 from SIPC advances. Approximately $1,290,000 of the latter amount was for customer credit balances and $3,100,000 for cash in lieu of missing securities. These figures indicate that SIPC had to provide approximately 41% of the funds required to satisfy valid customer claims.

The basic causes of the failures of the firms in liquidation are briefly summarized on pages 24-25 and in Appendix II.

Mismanagement, fraud and manipulation, lack of control due to poor books and records and the inexperience of principals, are prominent factors contributing to the failures of these broker-dealers. Action is being taken by the Commission, the self-regulatory organizations and other local authorities to proceed against principals who may have been culpable in these failures. In t[illegible] cases principals have been convicted of criminal [illegible]duct (see page 31). In other cases, indictments have been handed down and trials are pending. Administrative proceedings by the Commission to determine whether or not persons should be barred from the securities industry have been begun in some instances, and are under consideration in others. In this connection, in aid of possible action under Section 10(b) of the Act, SIPC has forwarded to the Commission and the self-regulatory agencies, a list of names of persons associated with firms for which trustees have been appointed.

Notices of the appointment of trustees and claim forms were mailed to over 107,000 customers. Claims were received from 26,000 customers. There were 17,300 distributions of customers' specifically identifiable property, single and separate fund cash and securities and advances from SIPC valued at $16,570,000. Of these customer claims, 23 were reported in excess of the $50,000/$20,000 limitation of SIPC coverage for advances, and were valued at $1,249,000. These customers have been or may be paid $730,000 by SIPC advances, and will have remaining claims against the single and separate funds and general estates of the debtor firms in the amount of $519,[illegible].

As of the end of March, SIPC had advanced $9,129,000 to trustees to pay customers' claims, to complete open contractual commitments and to pay administrative expenses. As of the same date, trustees had distributed approximately $11 million of cash and securities to customers from the assets held by the failing firms or received by the trustees for their accounts.

Finally, SIPC is not a regulatory agency, and therefore, is not a new regulatory layer in the structure of the securities industry. SIPC has only a small staff. It relies on the securities exchanges, the National Association of Securities Dealers, Inc., the Commission, the trustees, and industry sources for its information. It is subject to oversight by the Commission, and, of course, the Congress. SIPC has an advisory role in relation to the agencies just mentioned in matters concerning financial responsibilities of SIPC member firms and their reporting and inspection procedures and, in the exercise of that role, has commented upon many rule proposals by the Commission, the NASD, and the exchanges.

INTRODUCTION

The Corporation (SIPC) was created by the Securities Investor Protection Act of 1970, a federal statute which became effective December 30, 1970. Its principal purpose is to provide certain financial protections to the customers of failing brokers or dealers. The Corporation's role and method of operation can best be understood against certain background facts and events which were explained in some detail in its first annual report published in April of 1972.

In order to perform its primary role, SIPC has established and is accumulating a fund represented by assessments paid by its members based on their revenues from the securities business. This fund is, and in the future may be, supplemented if necessary by confirmed lines of credit. It is hoped that the fund as so constituted will at all times be sufficient for SIPC to discharge its responsibilities.

Although SIPC is not an agency or establishment of the United States Government, the ties between the two are close and continuing. Five directors are appointed by the President with the advice and consent of the Senate and two by government agencies. The activities of SIPC are subject to SEC and Congressional oversight. In the event the SIPC fund should be insufficient for its purposes, SIPC is authorized to borrow not in excess of $1 billion through the SEC from the United States Treasury and arrange for a repayment plan subject to SEC approval. Finally, the 1970 Act recites that the provisions of the Securities Exchange Act of 1934 (unless otherwise provided) apply as if the 1970 Act was an amendment to the 1934 Act.

Advances are made by SIPC to trustees appointed by a federal court to liquidate failing broker-dealer firms. The trustee establishes the claims of customers for cash or securities and pays customers' cash and net equity claims with funds advanced by SIPC, if necessary, within the limits prescribed by the Act.

The liquidation is carried out under the special procedures of the 1970 Act which, while they draw upon certain aspects of the Bankruptcy Act, are quite different in their operation from the latter Act. These procedures give effect to the circumstances of the securities business and the intent of the Congress to make evident to investors the governmental concern with and commitment to the public interest and public confidence in our securities markets.

The extent to which certain of SIPC's activities must mesh with existing regulatory and self-regulatory organizations and procedures is demonstrated by a brief review of the manner in which the system has operated in a typical case.

Under existing regulations of the Commission, the exchanges and the NASD, financial and other reports are submitted by broker-dealer firms to one or more of the self-regulatory organizations to which they belong, i.e., the National Association of Securities Dealers, Inc., the national securities exchanges, and the SEC. The firms, likewise, are subject to inspections by the examiners of one or more of these organizations. The Act provides that when it appears to the Commission or any self-regulatory organization that a broker or dealer is in or is approaching financial difficulty, SIPC is to be notified immediately.

If SIPC determines that any member has failed or is in danger of failing to meet its obligations to customers and that there exists one or more of the conditions specified below, SIPC, upon notice to the member, may apply to an appropriate federal district court for a decree adjudicating that the customers of the member are in need of the protection provided by the Act. The court shall grant the application and issue a decree if it finds that the member—

a. is insolvent within the meaning of Section 1(19)[1] of the Bankruptcy Act, or is unable to meet its obligations as they mature, or
b. has committed an act of bankruptcy within the meaning of Section 3 of the Bankruptcy Act,[2] or
c. is the subject of a proceeding pending in any

[1] "(19) A person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, removed, or permitted to be concealed or removed, with intent to defraud, hinder, or delay his creditors, shall not at a fair valuation be sufficient in amount to pay his debts;"

[2] "§3. Acts of Bankruptcy. a. Acts of bankruptcy by a person shall consist of his having (1) concealed, removed, or permitted to be concealed or removed any part of his property, with intent to hinder, delay, or defraud his creditors or any of them, or made or suffered a transfer of any of his property, fraudulent under the provisions of section 67 or 70 of this Act; or (2) made or suffered a preferential transfer as defined in subdivision a of section 60 of this Act; or (3) suffered or permitted, while insolvent, any creditor to obtain a lien upon any of his property through legal proceedings or distraint and not having vacated or discharged such lien within thirty days from the date thereof or at least five days before the date set for any sale or other disposition of such property; or (4) made a general assignment for the benefit of his creditors; or (5) while insolvent or unable to pay his debts as they mature, procured, permitted, or suffered voluntarily or involuntarily the appointment of a receiver or trustee to take charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt."

court or before any agency of the United States or any state in which a receiver, trustee, or liquidator for such member has been appointed, or

d. is not in compliance with applicable requirements under the 1934 Act or rules or regulations of the Commission or any self-regulatory organization with respect to financial responsibility or hypothecation of customers' securities, or

e. is unable to make such computations as may be necessary to establish compliance with such financial responsibility or hypothecation rules or regulations.

Members of SIPC file financial and operating statements and reports with the Commission or one or more of the self-regulatory agencies, and the firms are inspected or examined by the personnel of these agencies. SIPC does not, and it was intended that it should not, become involved in activities which duplicate or become pyramided upon the existing reporting and inspection machinery. Accordingly, SIPC considers information supplied by the staff of the Commission or one of the self-regulatory agencies, or both, as well as pertinent information from any other sources bearing on the question of whether a firm is in or is approaching financial difficulty. SIPC's principal concern in most instances is with the question of the probable ability of a firm, even if in financial difficulty, to meet its obligations to public customers. At all times between receipt of a notice that a firm is in or approaching financial difficulty, until the firm recovers or is otherwise dealt with, the principal judgment to be made by SIPC has to do with the threat of danger to customers and their need for the protections of the Act. In every case one or more of the five conditions above specified must exist as a prerequisite to filing an application for the appointment of a trustee.

Except during the months immediately following passage of the Act, SIPC has endeavored to file its applications concurrently with the Commission's application for an injunction and the appointment of a receiver. In most cases it has been possible to so coordinate the activities of the two staffs that the applications have been filed at the same time. This, of course, tends to minimize the confusion and delay which might otherwise occur. Typically, these actions by the Commission have been based on alleged violations of the net capital rules or the absence of or such inadequacy of books and records that the firm is unable to make such computations as may be necessary to establish compliance with the rules concerning financial responsibility or hypothecation of customers' securities. In most cases SIPC expects to rely upon the Commission to establish one or more of the five statutory conditions mentioned above. To date there have been three instances where SIPC has applied for the appointment of a trustee on the basis of the information supplied by the Commission and the self-regulatory organization where no court action was sought by the Commission. In a few cases SIPC has delayed filing its application for a period after the issuance of an injunction or restraining order and the appointment of a receiver on application by the Commission until there appeared to be no reasonable doubt that customers would need the protection of the Act even though the Commission was prepared to go forward at an earlier date with its own action pursuant to its own enforcement policies. This situation could arise in at least four ways.

1. A violation of the net capital rule might not portend as serious a situation from the point of view of customer protection as originally feared. This rule basically is a test of liquidity as of a particular time. It does not necessarily follow that a temporary or possibly inadvertent failure to comply with a required condition of liquidity at the particular time at which a computation is made makes losses to customers inevitable.
2. On some occasions additional capital is invested in the firm or it is determined that adjustments can be made correcting the capital deficiency.
3. In some cases it develops that the firm has no public customers.
4. In some situations a firm will propose as an alternative to a SIPC liquidation that it will self-liquidate or will liquidate under the supervision of one of the self-regulatory organizations without loss to customers.

If in fact there is no real danger to customers, SIPC should not seek an adjudication and the appointment of a trustee. This is so because SIPC can only liquidate; it may not reorganize or furnish funds for the rehabilitation of a firm. Once a liquidation proceeding has begun it is unlikely that the process can be stopped or reversed without the rights of others having been prejudiced. Accordingly, it is important that SIPC not enter a case unless it is clear that protection of customers requires it.

The system of relying upon a flow of information from the field offices of the National Association of Securities Dealers, Inc., the Commission and the examiners of the exchanges, through the central offices of these organizations to SIPC, at times has produced delays. These arise partly because of the number of people involved, the geographic disper-

sion of the industry, problems of communication caused by the need to coordinate the work of two or more agencies, and the frequent inability to secure up-to-date and reliable information because of the inadequacies of records or the ignorance or uncooperative attitudes of principals. Delays of this character have been reduced as procedures have been developed and improved and staff personnel have become more familiar with the Act.

A principal problem in many cases arises from the fact that the broker-dealer has failed to establish and maintain on a current basis adequate and reliable records. In some instances it has been necessary to attempt to reconstruct records or rely upon the investigatory efforts of a receiver in order to determine the situation as to customers. In a few cases the courts have appointed temporary receivers or fiscal agents for the purpose of determining the status of a firm. The various officers and personnel of the Commission and the self-regulatory organizations consistently have demonstrated a desire to furnish all the help and assistance their resources permit and the efforts of all concerned are to be commended.

Certain other characteristics of the regulatory structure should be mentioned since they bear upon the judgments which must be made in developing an appropriate form of organization and effective and uniform procedures.

SIPC has no control over who or what firms enter the securities business and thus become "members" of SIPC or continue as such.

As indicated above, SIPC has no regulatory authority of the character conferred upon the National Association of Securities Dealers, Inc., the Securities and Exchange Commission and the securities exchanges by the federal securities acts. As will be explained, however, SIPC has an advisory role to perform in this area and has increasingly expressed a point of view on various proposals affecting the industry as experience has been gained with liquidation problems and the causes of failures.

The statute confers no subpoena power on SIPC and does not provide specific authority to conduct investigations.[3] It has become clear, however, that the review of claims, the search for assets, the ascertainment of preferences, the revelation of misconduct, and the determination of whether to sue the principals of firms or others, require the development of a skilled investigative staff and the exercise of at least informal investigative procedures to supplement the more formal activities and procedures of the Commission and the self-regulatory authorities and the procedures of the trustees. In other words, although SIPC attempts to carry out its statutory obligations to pay customers' claims promptly, SIPC also has an obligation to take all reasonable steps to prevent the disbursal of its funds in payment of false, fraudulent or erroneous claims, or those barred by the Act (all of which have been encountered to date).

SIPC again wishes to acknowledge and express its appreciation for the continuing cooperation, assistance and support of the officials and staffs of the various agencies and self-regulatory organizations without which SIPC could not function. Finally, SIPC wishes to acknowledge the work and cooperation of the growing number of trustees and their counsel and accountants who have assumed the primary burden in a new and difficult field.

[3] The trustee, of course, has available the processes of the court under the Bankruptcy Act.

LIQUIDATION PROCEEDINGS

General Nature of a SIPC Liquidation

Section 6 of the 1970 Act sets forth the purposes of a proceeding in which a trustee has been appointed, the procedures to be followed, the powers and duties of the trustee, and the rights and priorities of the customers of the debtor firm.

The proceeding is essentially a liquidation proceeding, and the 1970 Act denominates it as such. In order to assure that only a liquidation will take place, Congress provided that, even though the proceeding is to be governed to a very large extent by those provisions of the Bankruptcy Act (11 U.S.C. § 1 *et seq.*) relating to corporate reorganizations (Chapter X), in no event is a plan of reorganization to be formulated.

The powers and duties of the trustee are quite broad. Section 6(b)(1) gives the trustee the same powers and title with respect to the debtor and its property, and the same rights to avoid preferences, as a trustee in bankruptcy and a trustee under Chapter X of the Bankruptcy Act would have. In addition, the trustee is given the right to operate the debtor's business so as to complete certain open contractual commitments and, with SIPC approval, to hire and fix the compensation of persons deemed necessary by the trustee for purposes of the liquidation proceedings, all without court approval.

The duties of the trustee, except where inconsistent with the 1970 Act or as otherwise ordered by the court, are the same as the duties of a trustee in bankruptcy.[31]

A liquidation proceeding is to be conducted:

> "in accordance with, and as though it were being conducted under, the provisions of chapter X and such of the provisions (other than section 60e) of chapters I to VII, inclusive, of the Bankruptcy Act as section 102 of chapter X would make applicable if an order of the court had been entered directly that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII, inclusive. . . ."

As indicated, where inconsistent with the provisions of the 1970 Act, the Bankruptcy Act does not apply. As a result, the above quoted provision effects a blending of the 1970 Act, the provisions of the Bankruptcy Act dealing with ordinary bankruptcy (Chapters I to VII, inclusive) and the provisions of the Bankruptcy Act dealing with corporate reorganization (Chapter X). Such a blending was intended to provide the court and the trustee with the flexibility necessary to the proper conduct of a complex proceeding.[32]

The 1970 Act specifically excludes Section 60e of the Bankruptcy Act which had governed the bankruptcy liquidation of stockbrokers.[33]

Prior to enactment of Section 60e in 1938, the rights of customers of stockbrokers depended upon the law of the state in which the transactions in question took place, and most cases involved the rights of margin customers. Two doctrines, the "Massachusetts" rule and the "New York" rule, emerged. Under the Massachusetts rule, a broker who carried stock in a margin account for customers was treated as the owner of that stock. The relationship between the parties was said to be that of debtor and creditor, with the customer treated as a general creditor. Under the New York rule, which was followed in most jurisdictions, the relationship was viewed as one of pledgor-pledgee, and a customer who could find similar securities in the possession of the stockbroker or the stockbroker's pledgee could reclaim them. Thus under the New York rule some customers might fare well and others fare poorly, depending simply upon which customers were lucky enough to discover that the stockbroker had in his possession some of the kinds of securities in which they had an interest.

Section 60e of the Bankruptcy Act was enacted primarily to correct the inequities caused by the operation of the New York rule. The section's major feature was the establishment of three classes of claimants to a stockbroker's assets. These three classes have been adopted, with minor changes, by the 1970 Act.

Section 6(c)(2)(C) of the 1970 Act establishes as one class those customers who are able to "specifically identify" their property in accordance with the terms of that section and who are entitled to the immediate possession of such property without the

[31] However, the trustee in a 1970 Act proceeding has no obligation to reduce securities to money.

[32] However, the blending also creates certain problems, in that there are conflicts between certain provisions of Chapters I through VII of the Bankruptcy Act and Chapter X of that Act. In addition, the major purpose of a Chapter X proceeding (the rehabilitation of the debtor) is inconsistent with one of the major purposes of a SIPC proceeding (the liquidation of the debtor), while certain provisions of Chapters I through VII which conflict with provisions of Chapter X are perfectly consistent with the purposes of a SIPC proceeding. SIPC is attempting to resolve these conflicts as they appear in any particular case.

[33] Section 60e continues to govern a bankruptcy liquidation of a stockbroker not a member of SIPC.

EXHIBIT 4 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

SIPC

SECURITIES INVESTOR PROTECTION CORPORATION

THIRD ANNUAL REPORT 1973

HIGHLIGHTS

The Corporation

SIPC was created by the Securities Investor Protection Act of 1970 (1970 Act), a federal statute which became effective December 30 of that year. It is a nonprofit membership corporation. It is not an agency or establishment of the United States Government, and it receives no appropriation of government funds. Under certain circumstances it has authority to borrow from the United States Treasury (see page 14).

Customer Protection

SIPC's primary purpose is to provide financial protection within the limits specified in the Act for customers of failing brokers and dealers who are members of SIPC. The protective provisions of the Act work in various ways for the benefit of customers of failing firms. For example, customers' fully paid for property, which is on hand in the brokerage firms which fail, and which is specifically identifiable for customers, is returned without limitation as to dollar value. For customers having valid net equity claims on the date the liquidation begins (see "Filing Date," page 18), SIPC advances funds through the trustee conducting the liquidation in amounts necessary to cover the customer claims up to a maximum of $50,000 for each customer, except that in the case of claims for cash, as distinct from securities, not more than $20,000 may be paid with funds advanced by SIPC.

- **Trustees were appointed in 1973 to liquidate 30 SIPC members that failed, including Weis Securities, Inc., the largest liquidation to date under the 1970 Act.**
- **Distributions having an aggregate value of over $200 million in cash and securities were made to customers in 1973.**
- **SIPC advanced over $35 million to trustees during 1973.**
- **Revenue from all sources in 1973 exceeded $25 million.**
- **During 1973 the balance in the "SIPC Fund" decreased $20 million due to a number of factors including substantial increases in advances to trustees, a partial phasing out of confirmed lines of credit pursuant to the credit agreement, and a decline in assessment revenues.**
- **In November Hugh F. Owens was appointed Chairman of the Board by President Nixon to succeed Byron D. Woodside, SIPC's first Chairman, who retired.**
- **Chairman Owens appointed a special Task Force to make recommendations to the SIPC Board for legislative changes in the 1970 Act.**

SIPC Members

The membership of SIPC is composed of all brokers or dealers registered under the Securities Exchange Act of 1934 and all members of a national securities exchange other than those whose business consists exclusively of one or more of four categories (see page 9). At the end of 1973 there were approximately 4,000 SIPC members.

Assessments

Funds required for the protection of customers of SIPC members are provided by assessments on SIPC members. These assessments are currently at the rate of ½ of 1 percent of each member's gross revenues from the securities business. The member assessments for 1973 were $22,859,000. From December 30, 1970 (inception) through December 31, 1973 assessment revenue aggregated approximately $84,970,000, including $5,670,000 of initial assessments based on 1969 gross revenues.

"SIPC Fund"

The "SIPC Fund" (as defined in the 1970 Act) consists of cash, United States Government or agency securities and confirmed lines of credit. At the end of 1973, it amounted to approximately $85 million. Estimated assessments for the fourth quarter and adjustments based on 1973 revenues which were received after year end aggregated $6,000,000. Initially, the "SIPC Fund" included confirmed lines of credit in the amount of $65 million. Under the terms of the Credit Agreement the available credit declines each year and expires in October 1976. On April 1, 1973, the lines of credit were reduced to $45 million and on April 1, 1974, they were further reduced to $35 million.

It is expected that the "SIPC Fund" will accumulate until it approximates $150 million, exclusive of lines of credit. The rate at which this can be accomplished depends upon many circumstances, including the

health of the securities industry, the demands for monies for the liquidation of SIPC member firms, and the flow of assessments. During 1973, there was a reduction in the "SIPC Fund" due principally to: the advances to the trustee in the Weis liquidation, the reduction in lines of credit, and a decline in assessment revenues.

Borrowing Authority Other Than from Commercial Sources

If necessary for the protection of customers in the event of a crisis of extreme severity, SIPC may borrow from the Securities and Exchange Commission (hereinafter throughout this report sometimes referred to as the Commission or SEC) which, in turn, will issue notes to the United States Treasury in amounts up to $1 billion.

Liquidations under the Act

SIPC does not, itself, liquidate a failing firm. Upon receipt of a notice that a SIPC member firm is in financial difficulty or approaching financial difficulty, and the occurrence of certain other events specified in the Act, SIPC may apply to a federal court for the appointment of a trustee. If the court grants the application, the trustee will take possession of the premises and property of the debtor firm and carry out the applicable statutory objectives. In brief, these are to:

a. return specifically identifiable property to customers entitled thereto;
b. distribute to customers the fund of cash and securities held for the accounts of customers and pay to customers moneys advanced by SIPC, if necessary;
c. complete open contractual commitments made in the ordinary course of business by the debtor firm where customers have an interest; and
d. liquidate the business of the debtor firm.

In connection with the foregoing, SIPC enforces its rights of subrogation. The Act specifically precludes the reorganization of a debtor firm. SIPC funds cannot be used to rehabilitate a firm, reorganize it or operate it in the hope it may recover.

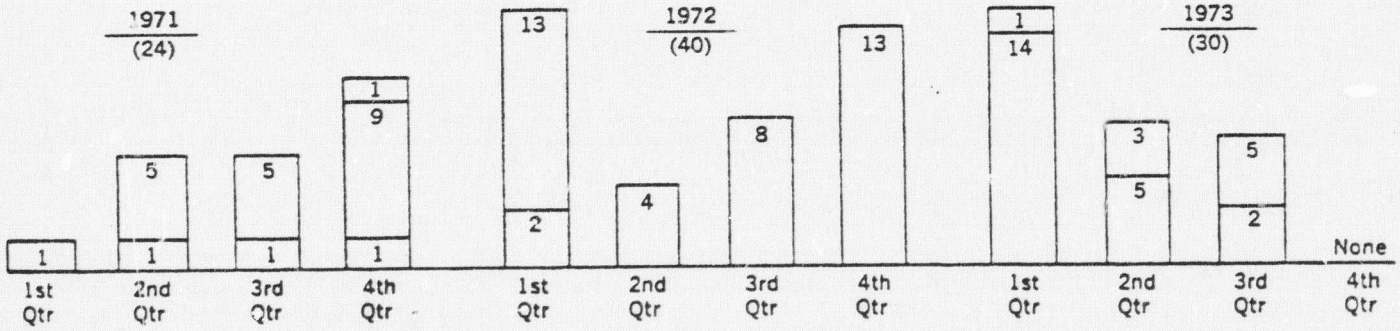
Data on Firms Placed in Liquidation

As of December 31, 1973, 94 broker-dealers had been placed in liquidation under the 1970 Act. The table below indicates the number of trustees appointed by quarter since the inception of SIPC. No firms were placed in liquidation during the 4th quarter of 1973.

	Number of Trustees Appointed		
	1971	1972	1973
1st Quarter	1	15	15
2nd Quarter	6	4	8
3rd Quarter	6	8	7
4th Quarter	11	13	0
	24	40	30

Trustees had completed the liquidation of 6 firms and had been fully or partially discharged by the courts as of December 31, 1973. In 78 other liquida-

Trustees Appointed by Quarter and Status of Liquidation Proceedings



☐ Customer claims still being processed—10

☐ Customer claims substantially satisfied—78 (over 90% of valid customers' claims paid)

☐ Liquidations completed—6

tions distributions of cash and/or securities to customers had been substantially completed by the end of 1973. In the 10 remaining cases, substantial progress had been made and trustees were in the process of validating claims and making distributions to customers. Overall, about 95% of all claims filed in the 94 liquidations had been satisfied or adjudicated by December 31, 1973.

In the 94 liquidations notices of the appointment of trustees and claim forms had been mailed to about 240,000 customers and claims were received from 84,000 customers. There have been distributions of customers' specifically identifiable property, single and separate fund cash and securities and advances from SIPC for customers with an aggregate value of approximately $219,690,000. Of this amount $180,240,000 in securities and cash came from debtors' estates and $39,450,000 from SIPC advances.

Of the total customers' claims processed (excluding those in the Weis liquidation) 33 claims, aggregating $2,064,000, exceeded the $50,000/$20,000 limitations. These customers have received $117,000 from debtors' assets and $1,093,000 from SIPC advances. Their remaining claims against the estates of the debtor firms amount to $854,000. In addition, approximately 100 customer claims in the Weis liquidation over the $50,000/$20,000 limits have been processed and partially satisfied.

Weis Securities, Inc. Liquidation

A trustee was appointed for the liquidation of Weis Securities, Inc., on May 30, 1973. This liquidation, the first involving a New York Stock Exchange member firm, is the largest liquidation commenced to date. The firm had 27 offices in the United States and 3 foreign offices. Claim forms were mailed to 55,000 securities customers and to more than 900 broker-dealers.

By Friday, June 8, the trustee began mailing checks to customers for payment of their free credit balances, and on Monday, June 11, mailing of specifically identified securities was begun. By June 15—two weeks after the trustee was appointed—more than $250,000 of customers' free credits had been paid.

Weis held approximately 16,000 security issues with an estimated market value of $150,000,000 for customers and proprietary accounts. To perform the many functions necessary to inventory, allocate, register and distribute this volume of securities, over 400 people were initially utilized by the trustee, including personnel of an independent public accounting firm.

By August 7, 1973, approximately two months after the trustee's appointment, over 26,000 customer claims had been processed, 15,000 checks totaling $20,000,000 had been mailed, and 16,500 certificates delivered to claimants.

At December 31, 1973, more than 98% of the Weis customer claims had been approved for distribution and $40,000,000 in cash and $120,000,000 in value of securities had been distributed to the claimants. SIPC had advanced $20,773,695 to the trustee for payments to customers.

The Weis liquidation involved areas not encountered in prior SIPC liquidations: regulated and non-regulated commodities accounts; writers and buyers of options, including those traded on the Chicago Board Options Exchange; and customer accounts introduced on a fully disclosed basis to Weis by other broker-dealers. The resolution of these involved the efforts of the trustee, his counsel, accountants, members of the securities industry, and industry organizations as well as the SIPC staff. Notable was the treatment and handling of put and call options in securities. With the cooperation and assistance of the Put and Call Brokers and Dealers Association, Inc., and the Association of Member Firms Option Departments (AMFOD), a Division of the Securities Industry Association, a procedure was devised which enabled the trustee to process long and short options for customers.

Characteristics of Firms Being Liquidated and Actions against Principals

Fraud and manipulation, lack of control due to poor books and records, mismanagement and the inexperience of principals are prominent factors contributing to the failure of a number of these broker-dealers. Action is being taken by the Commission, the self-regulatory organizations and other authorities having jurisdiction to proceed against principals who have been culpable in these failures. In nine instances principals have been convicted of criminal conduct (see page 28). In other cases indictments have been obtained and trials are pending. Administrative proceedings by the Commission to determine whether or not persons should be barred from the securities industry have been begun in some instances and are under consideration in others. A number of principals have been barred from association with any broker-dealer by the Commission and/or the NASD. In this connection, in support of possible action under Section 10(b) of the 1970 Act, SIPC has forwarded to the Commission and the self-regulatory organizations a list of persons associated with firms for which trustees were appointed.

Designation of Examining Authority

Section 9(c) of the Act provides that where a member of SIPC is a member of more than one self-regulatory

organization, SIPC shall designate one of the self-regulatory organizations to examine the member for compliance with applicable financial responsibility rules. Effective July 1, 1973, after consultation with the several self-regulatory organizations, designations of examining authorities were made in those cases where SIPC members were members of more than one self-regulatory organization. Since July 1, 1973, SIPC has redesignated examining authorities as necessitated by changes in the status of its members.

Task Force To Recommend Changes in the Act

One of the significant events during 1973 was Chairman Owens' creation of a special Task Force to consider ways and means, including legislative proposals, for improving the program of customer protection under the 1970 Act.

The Task Force, of which Chairman Owens is a member ex officio, is chaired by Theodore H. Focht, SIPC's General Counsel. Its other members are Robert M. Bishop, Senior Vice President of the New York Stock Exchange; Benjamin L. Lubin, Managing Partner of Bruns, Nordeman & Co.; Robert J. Millstone, a special counsel of the Securities and Exchange Commission; Edward S. Redington, the trustee for the liquidation of Weis Securities, Inc.; Kenneth Rosenblum, Counsel to the Midwest Stock Exchange; James W. Walker, Jr., Executive Vice President of the American Stock Exchange; and Frank J. Wilson, Senior Vice President of the National Association of Securities Dealers.

In announcing the composition of the Task Force Chairman Owens said: "The Securities Investor Protection Act of 1970 was an innovative and exemplary piece of remedial legislation, evolved principally through the cooperative efforts of the Congress, the Securities and Exchange Commission, and the securities industry itself. In general it has worked well, and thousands upon thousands of securities investors have been greatly benefited. However, as with any new legislation, only experience can demonstrate its precise efficacy and suggest areas of possible improvement. Now that SIPC has had experience in the liquidation of 94 firms over a three-year period, it is appropriate for it to join with other interested and knowledgeable parties in a common effort to improve this program of customer protection." The Task Force is completing its deliberations and will be making its report to Chairman Owens for submission to SIPC's Board of Directors in the near future.

Changes in SIPC Directors

The Honorable Hugh F. Owens was nominated by President Nixon on October 9, 1973 and after confirmation by the U. S. Senate took office on November 21, 1973, as successor to the Honorable Byron D. Woodside, first Chairman of SIPC. Mr. Woodside's intimate knowledge of securities regulation and his administrative abilities were invaluable in the recruiting and development of staff personnel and the establishment of operating procedures during SIPC's formative years. Mr. Owens is a former SEC Commissioner. He served on the Commission from 1964 until his appointment as Chairman of SIPC. Prior to 1964 Mr. Owens was Administrator of the Oklahoma Securities Commission.

Professor George J. Stigler of the University of Chicago, who served as Vice Chairman since the inception of SIPC, was succeeded by Mr. Jerome W. Van Gorkom, President, Trans Union Corporation. Mr. Samuel R. Pierce was succeeded by Mr. Edward C. Schmults representing the Department of the Treasury. Mr. Donald T. Regan, Chairman, Merrill Lynch, Pierce, Fenner and Smith, Inc., was succeeded by Mr. Ralph D. DeNunzio, Executive Vice President and Chairman of the Executive Committee, Kidder Peabody and Co., Inc.

Mr. Glenn E. Anderson, President, Carolina Securities Corporation, was reappointed as director to serve until December 31, 1975.

The Corporation wishes to express its appreciation to all of the directors who have made invaluable contributions to SIPC during its formative years.

Auditors

The Board of Directors selected S. D. Leidesdorf & Co. as the Corporation's auditors beginning with the calendar year 1973. The decision to appoint new auditors was made to avoid any question of independence which might be raised since the firm of Coopers and Lybrand, with SIPC's approval, was selected as accountants to assist trustees in three of the larger liquidations.

General

SIPC is not a regulatory organization and, therefore, is not a new regulatory layer in the structure of the securities industry. SIPC has a small staff and relies on the securities exchanges, the NASD, the Commission, the trustees and industry sources for its information. It is subject to oversight by the Commission and the Congress. SIPC has an advisory role in relation to the organizations mentioned above in matters concerning financial responsibility of SIPC member firms and their reporting and inspection procedures and, in the exercise of that role, has commented upon many rule proposals of the Commission, the NASD and the exchanges.

INTRODUCTION

The Corporation (SIPC) was created by the Securities Investor Protection Act of 1970, a federal statute which became effective December 30, 1970. Its principal purpose is to provide certain financial protections to the customers of failing brokers or dealers. SIPC is a nonprofit membership corporation and receives no appropriation of government funds. The Corporation's role and method of operation can best be understood against certain background facts and events which were explained in some detail in its first annual report published in April of 1972.

In order to perform its primary role, SIPC has established and is accumulating a fund represented by assessments paid by its members based on their revenues from the securities business. This fund is, and in the future may be, supplemented if necessary by confirmed lines of credit. It is hoped that the fund as so constituted will at all times be sufficient for SIPC to discharge its responsibilities.

Although SIPC is not an agency or establishment of the United States Government, the ties between the two are close and continuing. Five directors are appointed by the President with the advice and consent of the Senate and two by government agencies. The activities of SIPC are subject to SEC and Congressional oversight. In the event the SIPC fund should be insufficient for its purposes, SIPC is authorized to borrow not in excess of $1 billion through the SEC from the United States Treasury and arrange for a repayment plan subject to SEC approval. Finally, the 1970 Act states that the provisions of the Securities Exchange Act of 1934 (unless otherwise provided) apply as if the 1970 Act was an amendment to the 1934 Act.

Advances are made by SIPC to trustees appointed by a federal court to liquidate failing broker-dealer firms. The trustee establishes the claims of customers for cash or securities and pays customers' net equity claims with funds advanced by SIPC, if necessary, within the limits prescribed by the Act.

The liquidation is carried out under the special procedures of the 1970 Act which, while they draw upon certain aspects of the Bankruptcy Act, are quite different in their operation from the latter Act. These procedures give effect to the unique nature of the securities business and the intent of the Congress to make evident to investors the governmental concern with and commitment to the public interest and public confidence in our securities markets.

The extent to which certain of SIPC's activities must mesh with existing regulatory and self-regulatory organizations and procedures is demonstrated by a brief review of the manner in which the system has operated in a typical case.

Under existing regulations of the Commission, the exchanges and the NASD, financial and other reports are submitted by broker-dealer firms to one or more of the self-regulatory organizations to which they belong, i.e., the National Association of Securities Dealers, Inc., the national securities exchanges, and the SEC. The firms, likewise, are subject to inspections by the examiners of one or more of these organizations. The Act provides that when it appears to the Commission or any self-regulatory organization that a broker or dealer is in or is approaching financial difficulty, SIPC is to be notified immediately.

If SIPC determines that any member has failed or is in danger of failing to meet its obligations to customers and that there exists one or more of the conditions specified in the 1970 Act (see page 18), SIPC, upon notice to the member, may apply to an appropriate federal district court for a decree adjudicating that the customers of the member are in need of the protection provided by the Act.

Members of SIPC file financial and operating statements and reports with the Commission or one or more of the self-regulatory agencies, and the firms are inspected or examined by the personnel of these agencies. SIPC does not, and it was intended that it should not, become involved in activities which duplicate or become pyramided upon the existing reporting and inspection machinery. Accordingly, SIPC considers information supplied by the staff of the Commission or one of the self-regulatory agencies, or both, as well as pertinent information from any other sources bearing on the question of whether a firm is in or is approaching financial difficulty. SIPC's principal concern in most instances is with the question of the probable ability of a firm, even if in financial difficulty, to meet its obligations to public customers. At all times between receipt of a notice that a firm is in or approaching financial difficulty, until the firm recovers or is otherwise dealt with, the principal judgment to be made by SIPC has to do with the threat of danger to customers and their need for the protections of the Act. In every case one or more of the five conditions specified in Section 5(b) of the Act must exist as a prerequisite to filing an application for the appointment of a trustee.

SIPC endeavors to file its applications concurrently with the Commission's application for an injunction and the appointment of a receiver. In most cases it has been possible to so coordinate the activities of the two staffs that the applications have been filed at the same time. Typically, these actions by the Commission have been based on violations of the net capital rules or such inadequacy of books and records that the firm is unable to make such computations as may be necessary to establish compliance with the rules concerning financial responsibility or hypothecation of customers' securities. An additional financial responsibility rule (Rule 15c3–3) adopted by the Commission became effective on January 15, 1973, and the failure to comply with the requirements of this rule has in a number of instances been the basis of the existence of the statutory condition. This rule, entitled "Customer Protection—Reserves and Custody of Securities," imposes varying requirements on broker-dealers to better safeguard customer property. In most cases SIPC expects to rely upon the Commission to establish one or more of the five statutory conditions mentioned on page 18. To date there have been several instances where SIPC has applied for the appointment of a trustee on the basis of the information supplied by the Commission and the self-regulatory organization where no court action was sought by the Commission. In some cases SIPC has delayed filing its application for a period after the issuance of an injunction or restraining order and the appointment of a receiver on application by the Commission until there appeared to be no reasonable doubt that customers would need the protection of the Act even though the Commission was prepared to go forward at an earlier date with its own action pursuant to its own enforcement policies. This situation could arise in at least four ways:

1. A violation of the net capital rule might not portend as serious a situation from the point of view of customer protection as originally feared. This rule basically is a test of liquidity as of a particular time. It does not necessarily follow that a temporary or possibly inadvertent failure to comply with the net capital rule makes losses to customers inevitable.
2. On some occasions additional capital is invested in the firm or it is determined that adjustments can be made correcting the capital deficiency.
3. In some cases it develops that the firm has no public customers.
4. In some situations a firm will propose, as an alternative to a SIPC liquidation, that it will liquidate under the supervision of one of the self-regulatory organizations, or the court, without loss to customers.

If in fact there is no real danger to customers, SIPC should not seek an adjudication and the appointment of a trustee. This is so because SIPC can only liquidate; it may not reorganize or furnish funds for the rehabilitation of a firm. Accordingly, it is important that SIPC not enter a case unless it is clear that protection of customers requires it. There have been several instances where SIPC has not filed an application for appointment of a trustee and receivers have handled liquidations without loss to customers.

The system of relying upon a flow of information from the field offices of the National Association of Securities Dealers, Inc., the Commission and the examiners of the exchanges, through the central offices of these organizations to SIPC, at times has produced delays. These arise partly because of the number of people involved, the geographic dispersion of the industry, problems of communication caused by the need to coordinate the work of two or more agencies, and the frequent inability to secure up-to-date and reliable information because of the inadequacies of records or the ignorance or uncooperative attitudes of principals. Delays of this character have been reduced as procedures have been developed and improved and staff personnel have become more familiar with the Act.

A principal problem in many cases arises from the fact that the broker-dealer has failed to establish and maintain on a current basis adequate and reliable records. In some instances it has been necessary to attempt to reconstruct records or rely upon the investigatory efforts of a receiver in order to determine the situation as to customers. In a few cases the courts have appointed temporary receivers or fiscal agents for the purpose of determining the status of a firm. The various officers and personnel of the Commission and the self-regulatory organizations consistently have demonstrated a desire to furnish all the help and assistance their resources permit and the efforts of all concerned are to be commended.

Certain other characteristics of the regulatory structure should be mentioned since they bear upon the judgments which must be made in developing an appropriate form of organization and effective and uniform procedures.

SIPC has no control over who or what firms enter the securities business and thus become "members" of SIPC or continue as such.

As indicated above, SIPC has no regulatory authority of the character conferred upon the National Association of Securities Dealers, Inc., the Securities

and Exchange Commission and the securities exchanges by the federal securities acts. As will be explained, however, SIPC has an advisory role to perform in this area and has increasingly expressed a point of view on various proposals affecting the industry as experience has been gained with liquidation problems and the causes of failures.

The statute confers no subpoena power on SIPC and does not provide specific authority to conduct investigations.[1] It has become clear, however, that the review of claims, the search for assets, the ascertainment of preferences, the revelation of misconduct, and the determination of whether to sue the principals of firms or others, require the development of a skilled investigative staff and the exercise of at least informal investigative procedures to supplement the more formal activities and procedures of the Commission and the self-regulatory authorities and the procedures of the trustees. In other words, although SIPC attempts to carry out its statutory obligations to pay customers' claims promptly, SIPC also has an obligation to take all reasonable steps to prevent the disbursement of its funds in payment of false, fraudulent or erroneous claims, or those barred by the Act (all of which have been encountered to date).

SIPC again wishes to acknowledge and express its appreciation for the continuing cooperation, assistance and support of the officials and staffs of the various agencies and self-regulatory organizations without which SIPC could not function. Finally, SIPC wishes to acknowledge the work and cooperation of the growing number of trustees and their counsel and accountants who have assumed the primary burden in a new and difficult field.

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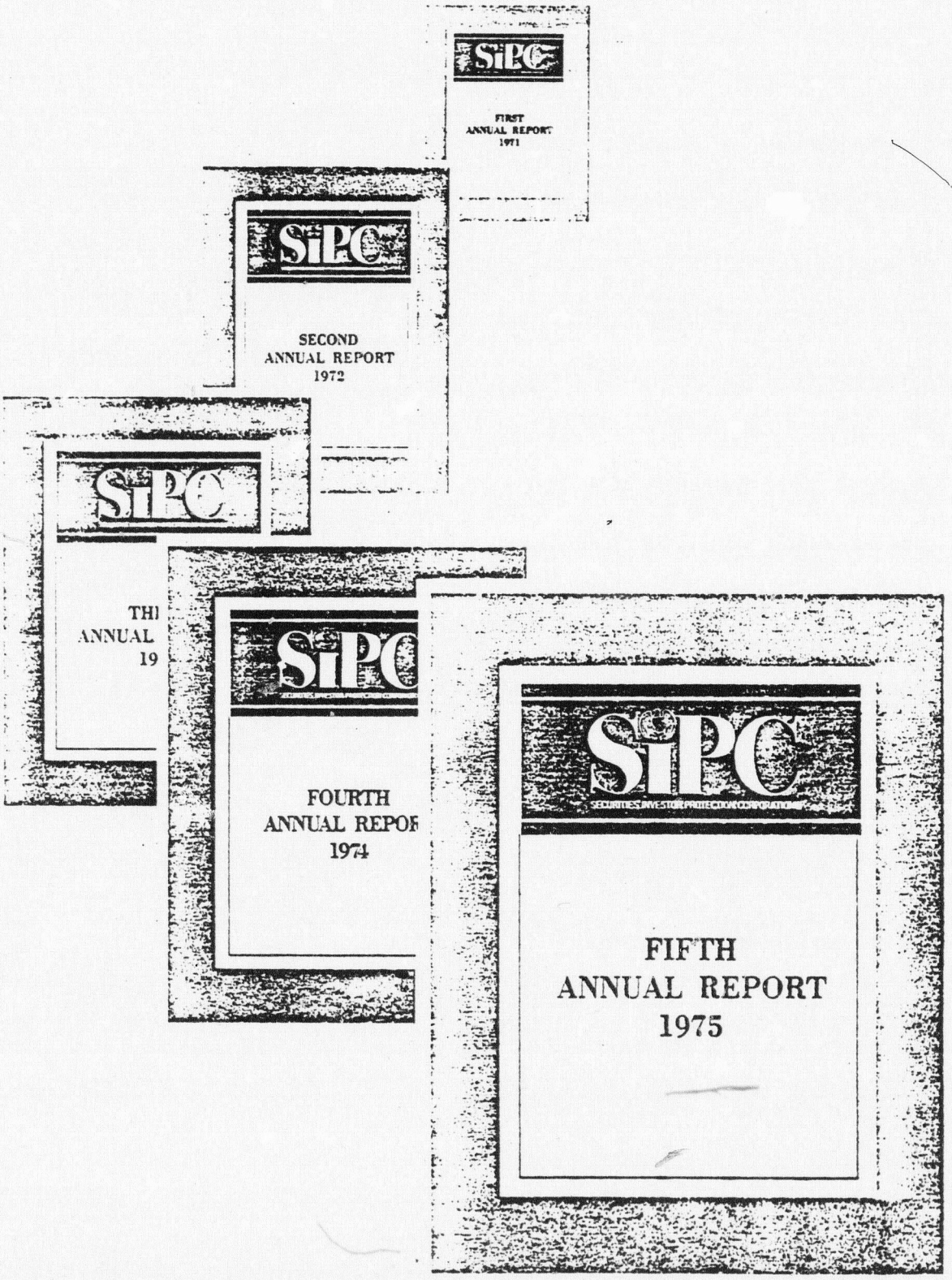
[1] The trustee, of course, has available the processes of the court under the Bankruptcy Act.

EXHIBIT 5 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.



had to interpret a new and sometimes complex statute; and members of the industry who have served on special committees and task forces, or who have made individual contributions. I salute them one and all.

It is fitting at this time to pay tribute to the members of the Board of Directors, past and present, who have served with dedication and often at personal sacrifice. In this regard particular mention should be made of two original directors who have served for five years: J. Charles Partee, who resigned in January, 1976, and Glenn E. Anderson, who will be leaving the Board later in the year. Their long and distinguished service is deeply appreciated. I also want to give special recognition to Lloyd W. McChesney, Vice President—Finance, and Theodore H. Focht, General Counsel. They have been with SIPC since inception, providing the professional experience and leadership which have been instrumental in transforming SIPC from a legislative concept to a smoothly functioning organization.

Much has been accomplished in five years. As I look ahead to the next five years, I am confident that the investing public we serve and the securities industry can be assured that SIPC's ability to fulfill its purpose will continue to be enhanced.

Hugh F. Owens

Hugh F. Owens

LIQUIDATION PROCEEDINGS

Liquidation proceedings were instituted for eight SIPC members in 1975, bringing the five-year total to 117. Eight is the smallest number of new cases in a year since inception and continues the steady, downward trend begun in 1973.

The members placed in liquidation were:

Member	Date Trustee Appointed
R. L. Whitney Securities, Inc. New York, N. Y.	2/ 6/75
Executive Securities Corporation New York, N. Y.	2/14/75
G. H. Sheppard & Co., Inc. New York, N. Y.	3/25/75
Saxon Securities Corp. New York, N. Y.	4/ 1/75
Horvat, Maniscalco & Co. Bergenfield, N. J.	4/25/75
Ben Campo d/b/a Campo & Co. Phoenix, Arizona	7/11/75
Investors Security Corp. Monroeville, Pennsylvania	9/15/75
Westco Financial Corp. Denver, Colorado	11/12/75

By far the costliest of the 1975 cases is Executive Securities Corporation. As of the end of the year, $2,073,933 had been advanced from the SIPC Fund to the trustee, making it the fourth most expensive SIPC liquidation to date. The value of specifically identifiable securities distributed for customer accounts of Executive Securities exceeded $2 million.

Two other 1975 liquidations, R. L. Whitney Securities, Inc., and Horvat, Maniscalco & Co., ranked in the top 20 cases in terms of cost to the SIPC Fund. Advances to the trustee of Whitney Securities amounted to $759,596; to the trustee of Horvat, Maniscalco & Co., $693,674.

In five of the eight cases, substantially all customer claims, except for problem claims, were satisfied by the end of 1975. In the other three assets were being marshalled, claims processed and customers being paid net equities or delivered specifically identifiable securities. Those three, plus one from 1974, were the only liquidations out of the total of 117 which had not been completed or substantially completed. The value of distributions of securities and cash for the accounts of customers of the eight members placed in liquidation in 1975 amounted to $5,985,542.

In 1975, for all liquidations in progress, an aggregate of $11,125,000 in securities and cash was distributed for accounts of customers, bringing the five-year total to $252,000,000. Of that amount approximately $208,000,000 was from debtor estates and $44,000,000 from SIPC advances.

Table I shows the net advances from the SIPC Fund in 117 liquidations as of December 31, 1975.

Table I
Net Advances from the SIPC Fund
As of December 31, 1975
117 Liquidations

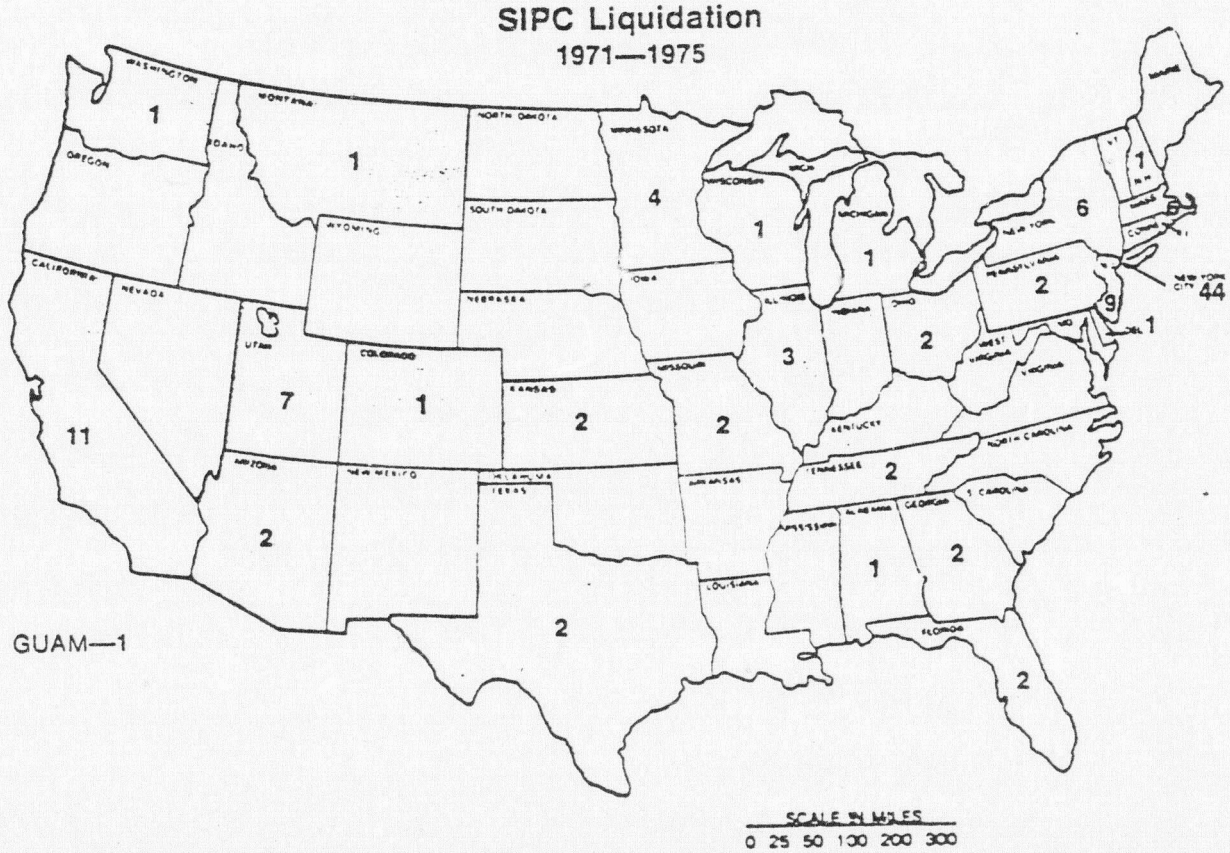
Net Advances From	Net Advances To	Number of Liquidations	Amounts Advanced
$5,000,001	up	1	$14,616,662
2,000,001	$5,000,000	3	7,426,382
1,000,001	2,000,000	5	6,459,173
500,001	1,000,000	13	9,935,647
250,001	500,000	18	6,180,129
100,001	250,000	26	3,932,479
50,001	100,000	26	1,985,281
25,001	50,000	14	567,709
10,001	25,000	7	119,273
-0-	10,000	4	11,692
		117	$51,234,427

It is interesting to note that the nine largest cases accounted for $28.5 million which is 56% of the total of $51.2 million advanced. In the largest case, Weis Securities, Inc., a net amount of $14.6 million was advanced to the trustee, which represents 29% of the total.

Claims Over the Limits

As of December 31, 1975, more than 100,000 customer claims had been satisfied in the 117 liquidations. Of these, only 137 were claims for securities or cash whose value was greater than the limits of protection afforded by the SIPC legislation—$50,000 per customer with a $20,000 maximum for cash. That is about one-tenth of one percent of all claims. The unsatisfied portion of those 137 claims amounted to $2.2 million, less than one percent of the value of all cash and securities distributed to customers. About 88% of all those claims would have been fully satisfied under the increase in the limits to $100,000, with a $40,000 maximum for cash claims, which SIPC has proposed to Congress.

Figure 1
Location of Members Placed in SIPC Liquidation
1971—1975



APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART A: Customer Claims and Distributions Being Processed by Trustees

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Response Receive
FOURTH QUARTER 1974					
Henry C. Atkeison, Jr., d/b/a Ambassador Church Finance Development Group, Inc.; d/b/a Atalbe Christian Credit Association, Inc. Brentwood, Tennessee (Fred D. Bryan)	4/18/70	11/ 7/74	12/17/74	531	115
THIRD QUARTER 1975					
Ben Campo, d/b/a Campo & Co. Phoenix, Arizona (Ronald E. Warnicke, Esq.)	4/ 7/71	3/ 8/73	7/11/75	257	16
Investors Security Corp., Monroeville, Pennsylvania (Thomas P. Ravis, Esq.)	5/ 8/66	9/15/75	9/15/75	4,300	244
FOURTH QUARTER 1975					
Westco Financial Corp., Denver, Colorado (William J. Fisher)	6/16/62	11/12/75	11/12/75	890	58
TOTAL 4 MEMBERS: PART A					

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

SECOND QUARTER 1971					
Howard Carlton, Inc., New York, New York (Clark J. Gurney, Esq.)	5/31/69	2/ 1/71	4/ 8/71	355	122
Stan Ingram & Associates, Los Angeles, California (Harold L. Orchid, Esq.)	12/22/68	2/22/71	6/ 8/71	400	4[illegible]
Packer, Wilbur & Co., Inc., New York, New York (Martin R. Gold, Esq.)	6/22/61	3/25/71	6/21/71	475	250
THIRD QUARTER 1971					
Security Planners Ltd., Inc., Boston Massachusetts (William C. Foehl, Esq.)	2/12/68	3/18/71	8/ 6/71	300	150
FOURTH QUARTER 1971					
Buttonwood Securities, Inc., LaJolla, California (Edwin M. Lamb)	4/15/70	9/ 8/71	10/18/71	3,780	1,502
Financial Equities, Ltd., Los Angeles, California (Gilbert Robinson, Esq.)	3/26/70	9/17/71	11/ 8/71	4,000	669
Aberdeen Securities Co., Inc., Wilmington, Delaware (Claude P. Hudson)	5/14/69	9/15/71	11/22/71	1,800	281

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Respons Receiv
FOURTH QUARTER 1971 (Cont'd)					
Rodney B. Price & Co., Inc., Atlanta, Georgia (Robert E. Hicks, Esq.)	4/29/70	12/ 7/71	12/ 7/71	891	59
Securities Northwest, Inc., Seattle, Washington (George W. McBroom, Esq.)	6/23/71	12/ 7/71	12/ 7/71	940	117
E. P. Seggos & Co., Inc., New York, New York (Clark J. Gurney, Esq.)	2/ 6/70	12/13/71	12/14/71	960	360
Kelly, Andrews & Bradley, Inc., New York, New York (Edwin L. Gasperini, Esq.)	8/10/68	12/15/71	12/21/71	1,327	205
FIRST QUARTER 1972					
Mid-Continent Securities Co., Inc., Wichita, Kansas (Thomas R. Brunner)	12/13/50	1/ 3/72	1/ 3/72	1,191	588
F. O. Baroff Co., Inc., New York, New York (Edward S. Davis, Esq.)	10/29/66	1/ 6/72	1/ 6/72	4,225	1,591
Murray, Lind & Co., Inc., Jersey City, New Jersey (Mark F. Hughes, Jr., Esq.)	5/23/69	1/14/72	1/24/72	1,186	749
S. J. Salmon & Co., Inc., New York, New York (John C. Fontaine, Esq.)	8/17/68	2/ 7/72	2/ 7/72	3,774	1,720
JNT Investors, Inc., New York, New York (Jerry B. Klein)	6/17/70	2/15/72	2/15/72	1,572	938
C. H. Wagner & Co., Inc., Boston, Massachusetts (Thomas J. Carens, Esq.)	6/23/69	2/22/72	2/28/72	14,000	839
White & Co., Inc., St. Louis, Missouri (Hugh S. Hauck)	3/ 5/47	3/23/72	3/30/72	150	59
SECOND QUARTER 1972					
Parker, England & Co., Inc., Hicksville, New York (John R. Dunne, Esq.)	10/23/68	11/12/71	4/20/72	600	230
John E. Samuel & Co., White Plains, New York (Henry J. Smith, Esq.)	5/ 9/62	2/ 3/72	5/30/72	350	11
THIRD QUARTER 1972					
G. M. Stanley & Co., Inc., New York, New York (Winthrop J. Allegaert, Esq.)	4/11/69	7/17/72	7/18/72	1,044	40
Holt, Murdock Securities, Inc., Helena, Montana (Thomas F. Dowling, Esq.)	11/10/70	7/26/72	7/26/72	650	18
North American Planning Corp., New York, New York (Joseph D. Ellison)	4/ 9/70	7/25/72	8/ 8/72	2,700	94

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Respons Receiv
THIRD QUARTER 1972 (Cont'd)					
Kenneth Bove & Co., Inc., New York, New York (William W. Golub, Esq.)	5/17/66	5/25/72	8/17/72	12,500	6,332
Northeast Investors Planning Corp. Bronx, New York (David Handel)	12/22/69	8/21/72	8/23/72	1,050	300
Doores Securities Corp., New York, New York (Peter H. Morrison, Esq.)	4/ 9/70	8/25/72	8/31/72	[illegible]	22
FOURTH QUARTER 1972					
Trio Securities, Inc., New York, New York (Bernard L. Augen)	5/20/71	9/29/72	10/ 3/72	90	67
G. L. Equities Corp., New York, New York (Charles H. Kaufman)	12/10/69	9/14/72	10/11/72	537	248
Equitable Equities, Inc., New York, New York (Herbert S. Camitta, Esq.)	2/ 4/70	10/13/72	10/13/72	134	69
Bovers, Parnass & Turel, Inc., Jersey City, New Jersey (Edward J. Rosner, Esq.)	10/12/68	10/19/72	10/19/72	1,180	307
Albert & Maguire Securities Co., Inc., Philadelphia, Pennsylvania (Donald M. Collins, Esq.)	9/ 9/68	10/19/72	10/19/72	5,181	1,310
Havener Securities Corp., New York, New York (Ezra G. Levin, Esq.)	11/13/59	10/13/72	10/24/72	900	533
C. I. Oren & Co., Inc., New York, New York (Martin R. Gold, Esq.)	11/10/68	10/13/72	10/26/72	345	61
J. R. Narwitz & Co., Sacramento, California (Loren S. Dahl, Esq.)	11/19/67	11/ 8/72	11/ 8/72	1,000	42
First Midwest Investment Corp., Milwaukee, Wisconsin (Frank C. Verbest)	8/ 1/68	11/28/72	11/28/72	2,500	928
First Eastern Investment Corp., Red Bank, New Jersey (Burton Peskin, Esq.)	1/29/58	12/11/72	12/11/72	700	59
FIRST QUARTER 1973					
Provident Securities, Inc., New York, New York (Harvey R. Miller, Esq.)	3/16/69	1/23/73	2/ 2/73 9/10/75*	2,100	850
N. F. James & Co., Inc., Jersey City, New Jersey (Milton Rosenkranz, Esq.)	8/14/71	2/ 1/73	2/ 9/73	150	110
Forma Securities, Inc., New York, New York (Lawrence P. King, Esq.)	3/27/69	2/ 9/73	2/ 9/73	2,399	487

*Successor Trustee

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Respor Recei
FIRST QUARTER 1973 (Cont'd)					
Frank & Drake, Inc., New York, New York (Daniel F. Callahan, Esq.)	1/ 8/69	2/22/73	2/22/73	1,900	42
Teig Ross, Inc., Bloomington, Minnesota (Lawrence Perlman, Esq.)	5/31/72	2/20/73	2/26/73	6,700	3,19
First Minneapolis Investment Corp., Minneapolis, Minnesota (James T. Hale, Esq.)	8/ 4/70	3/ 2/73	3/ 2/73	1,275	44
Custodian Security Brokerage Corp., New York, New York (Lyonel E. Zunz, Esq.)	4/25/71	3/ 6/73	3/ 7/73	673	67
Morgan, Kennedy & Co., Inc., New York, New York (Eugene L. Bondy, Jr., Esq.)	1/19/66	3/ 9/73	3/13/73	3,114	1,44
Lexington Capital Corp., New York, New York (Peter H. Morrison, Esq.)	11/19/69	3/21/73	3/26/73	1,918	62
Pacific Western Securities, Inc., Los Angeles, California (Edwin M. Lamb)	8/ 7/66	3/26/73	3/28/73	3,023	521
SECOND QUARTER 1973					
J. Shapiro Co., Minneapolis, Minnesota (William T. Dolan, Esq.)	7/31/68	4/13/73	4/13/73	32,730	11,820
Oxford Securities, Ltd., New York, New York (Lewis Kruger, Esq.)	12/ 8/71	1/19/73	4/17/73 3/3/76*	2,100	181
P & H Associates, New York, New York (Edward Brodsky, Esq.)	9/23/70	3/13/73	4/17/73	2,201	450
Weis Securities, Inc., New York, New York (Edward S. Redington, Esq.)	8/ 1/65	5/24/73	5/30/73	55,026	34,000
†In the administration of the estate, funds used to pay customers' free credit balances or cash in lieu of securities were not segregated as to source.					
Smith & Medford, Inc., Atlanta, Georgia (William Green, Esq.)	9/ 2/70	5/31/73	6/ 1/73	1,705	525
R. S. Emerson Co., Agana, Guam (Hyman B. Rosenzweig)	6/11/67	5/18/72	6/22/73	200	74
THIRD QUARTER 1973					
Gary L. Jones & Associates, Salt Lake City, Utah (D. Spencer Nilson)	11/ 6/71	5/ 8/73	7/12/73	4,004	1,165
Hill, Curtin & Ackroyd, Inc., Framingham, Massachusetts (Joseph P. Rooney, Esq.)	4/29/70	7/30/73	7/30/73	2,500	130

*Successor Trustee

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Responses Received
THIRD QUARTER 1973 (Cont'd)					
Klee & Company, Inc., Cleveland, Ohio (William M. Nelson, Jr., Esq.)	8/18/71	8/10/73	8/20/73	1,400	287
Duvest Corporation, Jersey City, New Jersey (Ralph M. Lowenbach, Esq.)	9/13/72	9/ 4/73	9/ 4/73	1,087	179
Associated Underwriters, Inc., Salt Lake City, Utah (Richard L. Blanck, Esq.)	7/ 8/70	9/11/73	9/11/73 10/23/73*	15[illegible]	45
Busec Securities Corp., Buena Park, California (Harold L. Orchid, Esq.)	8/10/69	9/13/73	9/14/73	575	65
FIRST QUARTER 1974					
Howard Lawrence & Co., Inc., New York, New York (Grant S. Lewis, Esq.)	8/ 9/69	1/11/74	1/11/74	1,800	365
Equidyne, Salt Lake City, Utah (Reed L. Martineau, Esq.)	4/19/72	2/ 7/74	2/ 7/74	6,452	641
Parker Jackson & Co., Inc., Salt Lake City, Utah (Herschel J. Saperstein, Esq.)	5/24/63	2/ 7/74	2/14/74	1,900	788
SECOND QUARTER 1974					
Harper Johnson Co. Inc., New York, New York (David P. Prescott, Esq.)	4/30/70	4/ 8/74	4/ 8/74	329	55
Memme & Co., Inc., New York, New York (Edward Farman, Esq.)	8/ 6/65	8/ 6/73	4/15/74	300	29
Christian-Paine & Co., Inc. Carlton Cambrige & Co., Inc. Hasbrouck Heights, New Jersey (Irwin Weinberg, Esq.)	6/24/70 7/21/68	4/10/74	4/18/74	17,500	7,884
London Securities, Ltd., New York, New York (Edward Brodsky, Esq.)	4/18/70	1/ 3/74	4/22/74	108	6
McMahon & Hoban, Inc., Chicago, Illinois (J. Kirk Windle, Esq.)	2/14/70	4/26/74	4/26/74	1,600	337
Seed Capital Corporation, New York, New York (Thomas Ungerland, Esq.)	1/21/71	2/25/74	5/ 6/74	243	35

*Successor Trustee

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART B: Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied

Member and Trustee By Date of Appointment	Date Registered as Broker-Dealer	Filing Date	Trustee Appointed	Customers[a] To Whom Notices and Claim Forms Were Mailed	Responses Received
THIRD QUARTER 1974					
Llorens Associates, Inc., New York, New York (Lloyd Frank, Esq.)	4/ 1/70	6/18/74	7/ 1/74	548	93
Investment Securities Corp., Clayton, Missouri (Martin M. Green, Esq.)	11/ 8/69	7/ 8/74	7/ 8/74	1,400	490
Financial House, Inc., Detroit, Michigan (David Robb, Esq.)	3/ 9/55	9/17/74	9/18/74	1,000	708
FOURTH QUARTER 1974					
Dow Financial, Inc., Irvine, California (Eugene W. Bell, Esq.)	4/ 8/73	11/11/74	11/11/74	1,250	423
Universal Underwriting Service, Inc. Salt Lake City, Utah (Herschel J. Saperstein, Esq.)	8/28/71	11/25/74	12/26/74	5,500	1,100
THIRD QUARTER 1975					
R. L. Whitney Securities, Inc., New York, New York (Thomas Ungerland, Esq.)	1/29/72	2/ 6/75	2/ 6/75	1,877	440
Executive Securities Corp., New York, New York (Cameron F. MacRae III, Esq.)	11/ 8/67	2/14/75	2/14/75	8,740	2,757
G. H. Sheppard & Co., Inc., New York, New York (Jerome M. Selvers, Esq.)	4/ 4/73	3/ 4/75	3/25/75	175	27
SECOND QUARTER 1975					
Saxon Securities Corp., New York, New York (Joseph O. Barton)	11/27/68	1/24/75	4/ 1/75	685	81
Horvat, Maniscalco & Co., Bergenfield, New Jersey (Lawrence E. Jaffe, Esq.)	9/ 5/71	4/25/75	4/25/75	1,093	221
TOTAL 77 MEMBERS: PART B				252,402	95,668

APPENDIX I

MEMBERS PLACED IN LIQUIDATION UNDER THE 1970 ACT

PART C: Liquidations Completed

1975 Member and Trustee By Date of Appointment	Trustee Appointed	Number of Customers For Whom Trustees Have Distributed Securities and Cash	Tot
First Investment Savings Corp., Birmingham, Alabama (William Green, Esq.)	6/18/71	196	$ 139
John Edward and Co., Inc., Lebanon, New Hampshire (George L. Manias, Esq.)	7/ 1/71	105	64
Baron & Co., Inc., Jersey City, New Jersey (Mark F. Hughes, Jr., Esq.)	12/ 1/71	257	101
International Funding-Securities, Inc. Long Beach, California (Sheldon M. Jaffe, Esq.)	12/ 6/71	588	
Barrett & Co., Inc., Minneapolis, Minnesota (Lawrence Perlman, Esq.)	3/29/72	290	246
King Securities of Chicago, Inc., Chicago, Illinois (J. Kirk Windle, Esq.)	9/15/72	23	14
Comstock Securities, Ltd., Salt Lake City, Utah (Herschel J. Saperstein, Esq.)	11/20/72	197	14
Horizon Securities, Inc., New York, New York (Alan Palwick, Esq.)	12/ 1/72	442	202
Project Securities & Co., Inc., Union, New Jersey (Martin D. Moroney, Esq.)	12/13/72	584	286
A. J. Orsino Securities, Inc., New York, New York (Edward Farman, Esq.)	2/22/73	6	
Dickinson, Rothbart & Co., Inc., New York, New York (Courtlandt Nicoll, Esq.)	3/16/73	58	25
Schreiber Bosse & Co., Inc., Cleveland, Ohio (Sterling Newell, Jr., Esq.)	5/ 7/73 8/15/73*	122	148
Glendale Securities Corp., Ridgewood, New York (Brian P. McNulty, Esq.)	5/29/73	166	71
Security Planning Inc., Long Beach, California (Sheldon M. Jaffe, Esq.)	8/27/73	103	15
TOTAL 14 MEMBERS 1975		3,137	1,420
TOTAL 22 MEMBERS 1973 & 1974 (b)		2,882	2,371
TOTAL 36 MEMBERS 1973, 1974 & 1975		6,019	$ 3,792

* Successor Trustee

PART D: Summary

	Responses Received/ Customers Receiving Distributions	Total
Part A: 4 Members—Customer Claims and Distributions Being Processed by Trustees	433 (a)	$
Part B: 77 Members—Substantially All Customer Claims (Except Problem Claims) Have Been Satisfied	95,868 (a)	205,462,
Sub Total	96,301	205,463,
Part C: 36 Members—Liquidations Completed	6,019 (d)	3,792,
TOTAL	102,320	$209,255,

Notes:

(a) Trustees commonly send notices and claim forms to all persons who, from the debtor's records, may have been customers. This is done so that these potential claimants may be advised of the proceeding.

(b) Revised from previous reports to reflect subsequent recoveries, disbursements and adjustments.

EXHIBIT 6 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

TOUCHE ROSS & CO.
1633 BROADWAY
NEW YORK, NEW YORK 10019

Edward S. Redington, Esq.
Trustee for the Liquidation of the
Business of Weis Securities, Inc.
One Wall Street
New York, New York 10005

Securities Investor Protection Corporation
900 Seventeenth Street, N. W.
Suite 800
Washington, D. C. 20006

Dear Sirs:

The undersigned acknowledges that it has been notified by Edward S. Redington, Trustee for the Liquidation of the Business of Weis Securities, Inc. (the "Trustee") and by the Securities Investor Protection Corporation ("SIPC") that the Trustee and SIPC are investigating various causes of action which they may have against the undersigned arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc. The undersigned, the Trustee and SIPC believe that it is in their mutual best interests to enter into the agreement herein so that the Trustee and SIPC will be free to give further consideration to this matter while at the same time protecting whatever claims they may now have against the undersigned.

The agreement and waiver referred to herein is for good and valuable consideration, including but not limited to the Trustee and SIPC refraining from taking any immediate legal

action against the undersigned, other than the serving of summonses pursuant to New York State Law.

The undersigned hereby confirms and agrees that all statutes of limitations and time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and by SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which have not run before the date hereof are tolled and extended to January 2, 1976. Further, the undersigned agrees not to assert, and hereby waives any defense based upon the omission by the Trustee and by SIPC, or by either of them, to take legal action against the undersigned on and after the date hereof, to and including January 2, 1976, without prejudice to any defense based on such omission to take legal action prior to the date hereof.

It is understood and agreed that this agreement is without prejudice to the signatories hereto, except to the extent of establishing the specific agreement and waiver referred to herein.

Very truly yours,

TOUCHE ROSS & CO.,

By David V. Burchfield
A Member of the Firm
1633 Broadway
New York, New York 10019

Dated: July 2, 1975

Agreed to and accepted by:

EDWARD S. REDINGTON, ESQ.

SECURITIES INVESTOR PROTECTION
CORPORATION

By

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On the 2nd day of July, 1975, before me personally came David V. Burchfield , to me known, who, being by me duly sworn, did depose and say that he resides at Fox Hunt Road, New Vernon, New Jersey ; that he is a member of Touche Ross & Co., the partnership described in the foregoing instrument; that he signed his name thereto on behalf of said partnership; and that he has been duly authorized to do the same.

Notary Public

EXHIBIT 7 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

TOUCHE ROSS & CO.
1633 BROADWAY
NEW YORK, NEW YORK 10019

Edward S. Redington, Esq.
Trustee for the Liquidation of
the Business of Weis Securities, Inc.
One Wall Street
New York, New York 10005

Securities Investor Protection Corporation
900 Seventeenth Street, N.W.
Suite 800
Washington, D. C. 20006

Dear Sirs:

The undersigned acknowledges that it has been notified by Edward S. Redington, Trustee for the Liquidation of the Business of Weis Securities, Inc. (the "Trustee") and by the Securities Investor Protection Corporation ("SIPC") that the Trustee and SIPC are investigating various causes of action which they may have against the undersigned arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc. The undersigned also acknowledges that, by its letter to the Trustee and SIPC of July 2, 1975, all statutes of limitationsand time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which had not run by July 2, 1975, were tolled and extended to January 2, 1976. The undersigned, the Trustee and SIPC believe that it is in their mutual best interests to enter into the agreement herein so that the Trustee and

SIPC will be free to give further consideration to this matter while at the same time protecting whatever claims they may now have against the undersigned.

The agreement and waiver referred to herein is for good and valuable consideration, including, but not limited to, the Trustee and SIPC refraining from taking any immediate legal action against the undersigned.

The undersigned hereby confirms and agrees that all statutes of limitations and time limits applicable to any and all claims, or possible claims, against the undersigned by the Trustee and by SIPC, or by either of them, arising out of auditing and accounting services rendered by the undersigned to Weis Securities, Inc., which had not run before July 2, 1975, are further tolled and extended to April 2, 1976. Further, the undersigned agrees not to assert, and hereby waives any defense based upon the omission by the Trustee and by SIPC, or by either of them, to take legal action against the undersigned on and after the date hereof, to and including April 2, 1976, without prejudice to any defense based on such omission to take legal action prior to July 2, 1975.

It is understood and agreed that this agreement is without prejudice to the signatories hereto, except to the extent of establishing the specific agreement and waiver referred to herein.

Very truly yours,

TOUCHE ROSS & CO.

By _____
A Member of the Firm
1633 Broadway
New York, New York 10019

Dated: December 19, 1975.

Agreed to and accepted by:

_____
EDWARD S. REDINGTON, ESQ.

SECURITIES INVESTOR PROTECTION
CORPORATION

By _____

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

On the 19th day of December, 1975, before me personally came Carleton H. Griffin , to me known, who, being by me duly sworn, did depose and say that he resides at 7 Lantern Lane, Darien, Connecticut ; that he is a member of Touche Ross & Co., the partnership described in the foregoing instrument; that he signed his name thereto on behalf of said partnership; and that he has been duly authorized to do the same.

Ruth S. Bothwin
Notary Public

RUTH S. BOTHWIN
Notary Public, State of New York
No. 31-4[illegible]7
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT 8 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

OFFICE COPY
SERVED 10/26/76
RECEIVED
FILED IN COURT
O & E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

Index No. 13996/76

NOTICE OF CROSS-MOTION

No Note of Issue Filed
Not Assigned to I.C. Pa

PLEASE TAKE NOTICE that, upon the annexed affidavit of Arnold I. Roth, sworn to October 26, 1976, and the complaint and the prior proceedings herein, the undersigned will cross-move this Court, at Special Term, Part I thereof, at the County Court House, 60 Centre Street, New York, New York, on October 29, 1976, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order

1. Pursuant to CPLR 2215 and 3211(a), subds. 2 and 7, dismissing the second so-called cause of action of plaintiff Edward S. Redington, on the grounds that this Court lacks jurisdiction of the subject matter thereof and that it fails to state a cause of action;

2. Pursuant to CPLR 2215, 3024(b) and 3211(a), subd. 7, dismissing the third so-called cause of action of plaintiff Edward S. Redington, on the grounds that it fails to state a

cause of action and contains scandalous and prejudicial matter unnecessarily inserted in the complaint;

3. Pursuant to CPLR 2215 and 3211(a), subd. 7, dismissing the first and second so-called causes of action of plaintiff Securities Investor Protection Corporation, and each of them, on the ground that they fail to state a cause of action;

4. Pursuant to CPLR 2215 and 3211(a), subds. 3 and 7, dismissing the third and fourth so-called causes of action of plaintiff Securities Investor Protection Corporation, and each of them, on the grounds that said plaintiff has not legal capacity to assert said so-called causes of action, and that they fail to state a cause of action; and

5. Granting to defendant such other relief as may be just and proper.

October 26, 1976

ROSENMAN COLIN FREUND
LEWIS & COHEN
Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 644-7000

TO:
HUGHES HUBBARD & REED
Attorneys for Plaintiff
Edward S. Redington
One Wall Street
New York, New York 10005

HAWKINS, DELAFIELD & WOOD
Attorneys for Plaintiff
Securities Investor
Protection Corporation
67 Wall Street
New York, New York 10005

EXHIBIT 9 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

TIR

U.S. DISTRICT COURT
FILED
JUL 27 1976
S.D.OF N.Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

- -x

76 Civ. 1981
(I.B.W.)

STIPULATION AND ORDER

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned as follows:

1. Defendant's time to answer or move with respect to the complaint herein is extended to and including September 15, 1976.

2. In the event defendant moves with respect to the complaint, plaintiffs shall have all reasonable time to respond to defendant's motion papers, and defendant shall have all reasonable time to reply.

3. The deposition of Karl Brunhuber is adjourned to a date no earlier than September 20, 1976, without prejudice to any objection thereto (except an objection solely on the ground that such deposition is premature or improper because a motion with respect to the complaint is pending or imminent) which may be asserted by defendant.

4. Plaintiffs will not proceed with any discovery prior to defendant's answer or motion with respect to the complaint except for the deposition of Karl Brunhuber and one

set of interrogatories. Any such interrogatories shall be served on or before July 23, 1976, shall be of a preliminary or structural nature, and shall not seek information on the substance of the causes of action alleged in the complaint. Defendant shall respond to any such interrogatories by answering and/or objecting on any ground (except solely on the ground that discovery is premature or improper because a motion with respect to the complaint is pending or imminent) by August 23, 1976.

5. Defendant shall not be required to respond to any request for discovery by plaintiffs or to participate in any discovery by plaintiffs during the period of time during which defendant is preparing its reply papers for any motion by defendant with respect to the complaint.

6. Defendant shall not proceed with discovery until plaintiffs have responded to defendant's motion papers on a motion with respect to the complaint or, if defendant does not move with respect to the complaint, until defendant answers.

7. Defendant shall not take any deposition until plaintiffs have completed the deposition of Karl Brunhuber or until the taking of the latter's deposition is terminated by Court Order.

8. On or before July 23, 1976, defendant shall serve a notice of appearance without prejudice to its rights to object to jurisdiction on any ground whatsoever and without

consenting to jurisdiction.

Dated: New York, New York
July 23, 1976.

HUGHES HUBBARD & REED

By _____
A Member of the Firm

Attorneys for Plaintiff Edward S. Redington, as Trustee for the liquidation of the business of Weis Securities, Inc.
One Wall Street
New York, New York 10005
(212) WH 3-6500

HAWKINS, DELAFIELD & WOOD

By _____
A Member of the Firm

Attorneys for Plaintiff Securities Investor Protection Corporation
67 Wall Street
New York, New York 10005
(212) 952-4700

ROSENMAN COLIN FREUND LEWIS & COHEN

By _____
A Member of the Firm

Attorneys for Defendant
575 Madison Avenue
New York, New York 10022
(212) 644-7000

SO ORDERED: JULY 23, 1976

_____
U.S.D.J.

EXHIBIT 10 TO THE REPLY AFFIDAVIT OF ARNOLD I. ROTH.

U. S. DISTRICT COURT
FILED
NOV 27 1974
S. D. OF N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - -

plaintiff now alleges:

(1) An "unlawful" agreement (unlawful because not duly ratified) between Allied management and the Internal Revenue Service limiting Allied's power to pay dividends or to take other specified actions until its tax indebtedness was liquidated.

(2) Issuance of "false and misleading proxy statements" in November 1973 - failing "to disclose that the defendants have been perpetuated in power as a result of the illegal agreement with I.R.S. and the illegal extension of its terms" and "that the present holders of preferred stock have deprived the common stockholders of their rights to select a majority of members of the Board of Directors . . . ." (Complaint, para. 15 and 16.)

The latter allegations, meant to assert a claim under Section 14(a) of the Securities Exchange Act of 1934, supply the basis for federal jurisdiction.

Defendants have moved for summary judgment dismissing the complaint or, in the alternative, for a stay or for security for costs. The motion for a stay will be granted, the other applications denied, but without prejudice to later renewal if and when the stay now granted has been terminated.

The basic controversy is the one that has meandered along for over four years in state court. While the systems of defendants differ, the plaintiff is the same and the essence of the alleged wrongs is the same. The asserted failures to disclose in the proxy statement of November 1973 are scarcely blatant and very possibly nonexistent to judge from the materials now before the court. If the proxy materials did not proclaim the arrangement with I.N.S., they assuredly spoke of it rather than concealing it. The same is true with respect to the alleged failure to disclose that the preferred holders had "deprived the common . . . of their rights. . . ." Assuming,

as the court does for present purposes, that there is a claim under Section 14(a), it will take much demonstration. The point for now is that the occasion for being in the federal court, apart from our more liberal rules on discovery, is not of the most compelling character.

In this setting, the harassing and duplicative qualities of this action take on substantial significance. The state action has evidently been nearly dormant for most of its already long life. But plaintiff does not choose to dismiss it. The action here covers much the same ground despite the Section 14(a) handle to the federal courthouse door. The state case, carried to conclusion, might well dispose of this one, though this is, of course, not a certainty.

Weighing the circumstances, and having in mind that the federal court is not yet the preferred place for administering state rules of corporate behavior, the continuation of the instant case while the state action remains pending appears to be unjustified.

The motion for a stay is granted. All proceedings herein are stayed until the state action has

[illegible] determination is modified for

[illegible] v. Wilson & Co., 422 F.2d

[illegible] 1970

936 2nd Cir [illegible]

DECISION GRANTING MOTION TO DISMISS BY WYATT, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against- 76 Civ. 1981

TOUCHE ROSS & CO., 45650

Defendant.

- x

APPEARANCES:

HUGHES HUBBARD & REED, ESQS.
Attorneys for Plaintiff Edward S. Redington, as Trustee for the liquidation of the business of Weis Securities, Inc.
One Wall Street
New York, New York 10005

JOHN S. ALLEE, ESQ.
JAMES B. KOBAK, JR., ESQ.
WILLIAM S. BARRETT, ESQ.
Of Counsel

HAWKINS, DELAFIELD & WOOD, ESQS.
Attorneys for Plaintiff Securities Investor Protection Corporation
67 Wall Street
New York, New York 10005

CLARENCE FRIED, ESQ.
WILFRED R. CARON, ESQ.
MICHAEL E. DON, ESQ.
RAFAEL PASTOR, ESQ.
Of Counsel

ROSENMAN COLIN FREUND LEWIS & COHEN, ESQS.
Attorneys for Defendant Touche Ross & Co.
575 Madison Avenue
New York, New York 10022

ARNOLD I. ROTH, ESQ.
JAMES K. NEVLING, JR., ESQ.
ARTHUR LINKER, ESQ.
MARC S. DREIER, ESQ.
STEVEN A. ASHER, ESQ.
Of Counsel

WYATT, District Judge,

This is a motion by defendant Touche Ross & Co. (Touche) to dismiss the complaint pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, on two grounds: that the Court lacks subject matter jurisdiction, and that the complaint fails to state a claim upon which relief can be granted; in the alternative, it is sought to stay this action pending determination of an action between the same parties in the New York Supreme Court, New York County.

1.

Weis Securities, Inc. (Weis), was a large stock brokerage house. Weis was a broker-dealer registered with the Securities and Exchange Commission (SEC) and was a member of the New York Stock Exchange and of other stock exchanges. Weis is said to be a corporation, although where incorporated does not appear; its principal place of business is said to have been in the City of New York.

Touche is a firm of certified public accountants and acted as such for Weis.

In May 1973, Securities Investor Protection Corporation (SIPC) applied to this Court for a decree adjudicating, under the Securities Investor Protection Act of 1970 (15 U.S.C. §§ 78aaa and following; "SIPA"), that

customers of Weis were in need of protection under SIPA, appointing a trustee for the liquidation of Weis, and affording other relief. This Court granted the application and appointed Edward S. Redington as Trustee (referred to usually as the "Trustee"). The proceedings in which the Trustee was appointed are described in Exchange National Bank v. Wyatt, 517 F.2d 453 (2d Cir. 1975). The Trustee was appointed on May 30, 1973; the "filing date" (15 U.S.C. § 78eee(b)(4)(B)) was May 24, 1973. Weis has since been in liquidation under SIPA.

2.

On July 3, 1975, the Trustee and SIPC commenced an action against Touche in New York Supreme Court, New York County (Index No. 13996/76; the action has a 1976 number because the first paper filed in the action was in 1976). The causes of action of each plaintiff were separately stated but there were in the complaint 21 paragraphs of "common allegations" which were then incorporated by reference in each claim of the Trustee and in each claim of SIPC. There were five causes of action by the Trustee and four causes of action by SIPC.

3.

The case at bar was commenced in this Court on April 30, 1976. The parties are the same as those in the State action. The Trustee and SIPC are again suing Touche.

The complaint in the case at bar asserts exactly

the same claims as in the State action and adds claims by the Trustee and SIPC based on alleged violations by Touche of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78a and following; "the 1934 Act"), specifically of Section 17 of the 1934 Act (15 U.S.C. § 78q).

The "common allegations" are the same in both actions except that three paragraphs have been added here to shore up the added Section 17 claims of the Trustee and SIPC.

In this action, there are 6 claims by the Trustee and 8 claims by SIPC. (The claims are mistakenly called causes of action in the complaint, ignoring Fed. R. Civ. P. 8 and following the nomenclature in the State courts.)

The two plaintiffs have joined as such (presumably under Fed. R. Civ. P. 20(a) and properly) but their claims are several, not joint, and are stated in separate counts.

Counts two through six of the complaint in the case at bar are exactly the same as the five causes of action of the Trustee in the State action. Count one in the case at bar is the added claim under Section 17 of the 1934 Act.

The first four claims of SIPC in the case at bar are not in the State action and are apparently intended to be based on Section 17 of the 1934 Act although in the first four counts there is no express reference to Section 17 (except as paragraphs 1, 16, 17, 21, and 22 of the complaint are incorporated by reference in these counts). The other four SIPC claims in the case at bar are exactly the same

as the four SIPC causes of action in the State action.

4.

The claims in the case at bar are alleged to arise under the 1934 Act and particularly under Section 17 thereof (15 U.S.C. § 78q), under Section 6 of SIPA (15 U.S.C. § 78fff), and under the common law (complaint, para 1).

The complaint avers that the Court has jurisdiction over the claims of the Trustee under Section 27 of the 1934 Act and under 28 U.S.C. § 1331. It further avers (in effect) that the Court has jurisdiction in bankruptcy by virtue of Section 6 of SIPA (15 U.S.C. § 78fff), under Sections 2a(7), 102 and 115 of the Bankruptcy Act (11 U.S.C. §§ 11a(7), 502 and 515), and under 28 U.S.C. § 1334. The complaint also avers jurisdiction over the common law claims of the Trustee under principles of pendent jurisdiction (complaint, para 2).

Jurisdiction over SIPC's claims is alleged to exist under Section 27 of the 1934 Act and 28 U.S.C. § 1331, under the diversity of citizenship statute (28 U.S.C. § 1332) and under principles of pendent jurisdiction (complaint, para 3).

There then follows a series of "Common Allegations" comprising 24 paragraphs of the complaint which are incorporated by reference in both the six counts pleaded by the Trustee and the eight counts pleaded by SIPC.

The complaint avers that five of Weis' officers misstated the financial condition and results of operation

of Weis in financial reports prepared at the end of fiscal year 1972, and that such reports were required to be filed with regulatory authorities pursuant to Section 17 of the 1934 Act. It alleges that these reports were directly or indirectly submitted to Weis, its Board of Directors, the SEC, SIPC, the Exchange, and Weis' customers, creditors, lenders and shareholders.

Plaintiffs aver that Touche breached duties it assumed toward them under Section 17 of the 1934 Act and under the common law when it became Weis' auditor and undertook to perform all necessary auditing and accounting services needed to audit the reports of financial condition that Weis was required to submit to the SEC. Essentially, these "common allegations" charge Touche with negligence and recklessness in the performance of its services (para 28); SIPC argues that they also charge wilful misconduct (Memorandum of Plaintiff SIPC in Opposition to Defendant's Motion to Dismiss, p.5). The complaint also alleges that Touche falsely certified that it had performed the necessary services and made false representations with respect to the Answers to Financial Questionnaire and other documents dated May 26, 1972. The "common allegations" then state that because of these failures and misrepresentations of Touche, the Exchange, the SEC and SIPC were prevented from knowing the true condition of Weis, and were prevented from acting to safeguard the assets of Weis and the property held by Weis for its customers;

and that Weis continued to undertake financial obligations which it could not satisfy. As a result of the failure to act of the regulatory authorities, the liquidation of Weis became necessary when the facts were discovered. This was after the Weis assets and the property held by it for customers had been further depleted, and when it was too late to take remedial action. Upon liquidation, SIPC was required under SIPA to provide the Trustee with funds for the payment of claims submitted by customers and "certain other creditors" of Weis.

Paragraphs 32-49 of the complaint state six claims by the Trustee against Touche. The first claim charges that Touche violated, and aided and abetted the Weis officers in violating, Section 17 of the 1934 Act and the rules and regulations promulgated thereunder, which require broker-dealers (such as Weis) to file accurate reports of their financial condition, including reports such as those certified by Touche. It further states (para 34) that "Weis, its Board of Directors, its creditors, customers, lenders and shareholders were among the class of persons which Section 17 of the 1934 Act was designed to protect and were among the beneficiaries of duties imposed on Touche Ross by Section 17 of the 1934 Act", and that the injuries which occurred as a result of the liquidation of Weis were of the type that Section 17 was intended to prevent.

The Trustee's other five claims state that Touche

breached duties to Weis under the common law of New York. The second claim charges Touche with negligence per se in violating Section 17 of the 1934 Act. The third charges Touche with negligence and malpractice. The fourth charges Touche with recklessness and gross negligence. The Trustee's fifth claim charges breach of contract. The sixth claim charges breach of express and implied warranties that Touche would comply with generally accepted auditing standards, generally accepted accounting principles, and the audit regulations of the Exchange and the SEC.

In paragraphs 52-85 of the complaint, SIPC alleges eight claims against Touche, four on its own behalf and four on behalf of Weis' customers and certain other creditors. The first four claims allege violations of Section 17 of the 1934 Act and the others allege violations of the common law.

SIPC's first claim is under Section 17 of the 1934 Act and charges that Touche failed to comply with the auditing standards and regulations prescribed by the 1934 Act and the rules promulgated thereunder in that opinion letters, answers to the financial questionnaire and financial statements prepared by Touche were false, inaccurate and incomplete, and that as a consequence the SIPC fund has been depleted in order to satisfy the claims of 34,000 customers and other creditors. Its third claim (also under Section 17) charges that Touche had knowledge, or, but for its errors and omissions, would have had knowledge, of the deceptions caused by the Weis

officers in violation of the 1934 Act and that Touche aided and abetted the Weis officers in this deception. The fifth claim (under common law) charges Touche with negligence and malpractice. The seventh claim (under common law) charges Touche with recklessness and gross negligence. SIPC's second, fourth, sixth and eighth claims are the same respectively as the first, third, fifth and seventh claims above described except that the second, fourth, sixth and eighth claims aver that Touche violated duties to the customers and certain other creditors of Weis and that SIPC is subrogated to the claims which such customers and other creditors could have asserted, this because SIPC has compensated them out of the SIPC fund.

5.

As seen above, the Trustee's first claim and the first, second, third, and fourth claims of SIPC are asserted under Section 17 of the 1934 Act (15 U.S.C. § 78q).

The argument for Touche is that there is no provision in Section 17 for a private right of action (as, for example, there is in Section 16) and that no private right of action is maintainable under Section 17.

The argument for plaintiffs is that, while no private right of action is expressly provided for in Section 17, a right of action should be implied for parties such as SIPC, the Trustee and customers and creditors of Weis who are said to fall within the "class for whose <u>especial</u> benefit

the statute was enacted", citing Cort v. Ash, 422 U.S. 66, 78 (1975; emphasis in original), which quoted from Texas & P.R.Co., v. Rigsby, 241 U.S. 33, 39 (1916).

6.

If there were any violations by Touche of Section 17, they occurred in 1972. Since then, there have been extensive amendments (in 1975) to Section 17 but in 1972 the relevant part of Section 17 read as follows:

> "Every national securities exchange, every member thereof, every broker or dealer who transacts a business in securities through the medium of any such member, every registered securities association, and every broker or dealer registered pursuant to section 78o of this title, shall make, keep, and preserve for such periods, such accounts, correspondence, memoranda, papers, books, and other records, and make such reports, as the Commission by its rules and regulations may prescribe as necessary or appropriate in the public interest or for the protection of investors. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time or from time to time to such reasonable periodic, special, or other examinations by examiners or other representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors."

From the wording of this provision and in the context of the other provisions of the 1934 Act, it would appear that Section 17 was designed to supply administrative guidance in the bookkeeping area and not to create any rights in anybody. Section 17 has also been used as authority for the inspection program of the SEC, which is somewhat like the inspection work of the bank examiners.

In the 43 years during which the statute has been on the books, there has been no decision whether a private

right of action can be asserted for a violation of Section 17. The Supreme Court, about a year ago, refused to consider whether there was such a private cause of action. Ernst & Ernst v. Hochfelder, 425 U.S. 185, 194 fn. 13 (1976)

There is nothing explicit to show any legislative intent respecting a private claim under Section 17.

The section, however, is entitled "Accounts and records, reports . . . ." and the very next section is entitled "Liability for misleading statements". This next section, Section 18 (15 U.S.C. § 78r), creates a private cause of action for "misleading statements" in "any application, report, or document filed pursuant to this chapter . . ." in favor of any person who purchased or sold a security at a price affected by the misleading statements. The subject matter of the two sections, their titles, and their juxtaposition would strongly suggest a legislative intent that the only private claim for a violation of Section 17 was the claim created in Section 18. Plaintiffs here are obliged to argue that there is an implied private claim under Section 17 broader than the claim expressly created by Section 18. This is because they did not purchase nor sell any security "at a price affected . . ." etc., and thus cannot state a claim under Section 18. In this connection, it may be well to recall the words of the Supreme Court in Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 736 (1975):

"Section 18 of the 1934 Act, prohibiting false or misleading statements in reports or other documents required to be filed by the 1934 Act, limits the express remedy provided for its violation to 'any person . . . who . . . shall have purchased or sold a security at a price which was affected by such statement . . .'. It would indeed be anomalous to impute to Congress an intention to expand the plaintiff class for a judicially implied cause of action beyond the bounds it delineated for comparable express causes of action."

Sections 13(a) and 13(d) of the 1934 Act (15 U.S.C. § 78m(a) and (d)) require the filing of specified reports by issuers and the filing of reports by those who acquire more than 5% of a registered equity security. Claims have been asserted under this Section by those who were not purchasers or sellers of any security and who thus could not state a claim under Section 18. They asked the Courts, as the plaintiffs do here, to imply a private right of action from the section alleged to have been violated. The Courts have declined to do so, holding that Section 18 is the only civil liability provision for a violation of the "reporting provisions" of the 1934 Act. Meer v. United Brands Co., CCH Fed.Sec.L.Rep. ¶95,648 (S.D.N.Y. July 6, 1976; Carter,J.); Myers v. American Leisure Time Enterprises, 402 F.Supp. 213 (S.D.N.Y. 1975; Weinfeld,J.), affirmed without opinion 538 F.2d 312 (2d Cir. 1976); In re Penn Central Securities Litigation, 347 F.Supp. 1327,1340 (E.D.Pa. 1972), affirmed 494 F.2d 528 (3d Cir. 1974).

In In re Penn Central Securities Litigation, cited above, the District Court stated (347 F.Supp. at 1340):

"Section 13 is one of a number of provisions that

> require the filing of applications, documents and reports. See §§ 12(b), 12(g), 15(b)(1), 15A(a), 16(a) and 17(a). Section 18(a) is the 'catch-all' civil liability provision for all of the reporting requirements of the Exchange Act, and we conclude that it is the exclusive remedy for violations of § 13(a)."

Opposed to the suggestion that the only protection intended for a violation of Section 17 was the liability created in Section 18, is the argument that customers of brokers and dealers in their dealings with such brokers and dealers can never rely on the relief provided by Section 18 because in such dealings they can never meet the purchaser-seller requirement of that section. Section 17, runs the argument, was intended to protect those who choose to leave securities they have purchased, or cash resulting from securities they have sold, with their broker. Section 17's purpose is to protect these people by requiring their brokers to file reports with the SEC so that the SEC (and now SIPC as well) might police their activities so as to ensure the solvency of brokers.

Although Section 18 might not, of itself, foreclose the implication of a private right of action under Section 17, this does not mean that Section 18 is irrelevant to the question here.

It should be noted that when Congress wanted to create private causes of action for violations of provisions of the 1934 Act, it knew how to do it and did do it. In addition to the "reporting" violations made the subject of private rights of action in Section 18, Congress specifically

provided for civil liability in Section 9(e) (15 U.S.C. § 78i(e)) and Section 16(b) (15 U.S.C. § 78p(b)) of the 1934 Act. Congress also provided for "liabilities of controlling persons" in Section 20 of the 1934 Act (15 U.S.C. § 78t).

Nor is it necessary to imply a civil liability under Section 17 in order to enforce its provisions. There can be a criminal prosecution. United States v. Sloan, 389 F.Supp. 526 (S.D.N.Y. 1975). The SEC can secure an injunction where a violation is proved of Section 17, described by Judge Tenney as "the bookkeeping rule". SEC v. Resch-Cassin & Co., Inc., 362 F.Supp. 964, 979 (S.D.N.Y. 1973)

It remains to consider J. I. Case Company v. Borak, 377 U.S. 428 (1964) on which plaintiffs properly rely. In Borak a private right of action was implied for a violation of Section 14(a) of the 1934 Act (15 U.S.C. § 78n(a)) despite the lack of any provision therein for a private right of action and despite the existence of the civil liability provision in Section 18 (15 U.S.C. § 78r).

Borak was a suit by a stockholder of Case, the management of which solicited proxies for voting in favor of a merger of Case with another corporation. It was alleged that the proxy solicitation material was false and was in violation of Section 14(a) of the 1934 Act; that the merger would not have been approved by stockholders were it not for the false and misleading statements; and that the stockholders of Case had been damaged.

Section 14(a), together with an SEC Rule prescribed thereunder, makes it unlawful to solicit proxies by means of a proxy statement to stockholders containing false or misleading statements.

There is nothing in the statute which requires any filing with the SEC of proxy statements or other soliciting material. But the regulations of the SEC under Section 14(require that "preliminary copies" of the proxy statement or other soliciting material be filed with the SEC, as well as "definitive copies". 17 CFR § 240.14a-6

Soliciting material is plainly intended for the information of the stockholders, not of the SEC. The SEC has only an oversight or policing function.

In Borak a private right of action was implied because plaintiff, one of the stockholders solicited, was of the class intended to be protected by the statute; and because such private action was a "necessary supplement to Commission action" (377 U.S. at 432) since the SEC had not the time for an "independent examination" of the soliciting material filed with it (377 U.S. at 432).

But the case at bar is not like Borak. The reports required by Section 17 in 1972 were not for the information of any "investors" and were not sent to them but were for the SEC, primarily for monitoring the net capital requirements of the 1934 Act (Section 8(b); 15 U.S.C. § 78h(b)). Moreover, in examining the records and reports made under Section 17(a)

the SEC does not have the time limitations applicable to the Borak proxy statements (ten days in some cases (17 CFR § 240.14a-6(a)) and two days in others (17 CFR § 240.14a-6(b)). The SEC has an inspection program, similar to that of bank examinations. It is not "necessary" to enforce Section 17 by private actions; criminal prosecutions and SEC injunctive actions seem abundantly sufficient. If, as is the case, the record keeping requirements of Section 17 are to give early warning to the SEC of financial difficulties of a broker and thus avoid liquidation, it cannot help to imply a private right of action after liquidation has become a fact.

The Supreme Court has refused to expand the Borak principle; indeed, the Court has restricted it.

In Cort v. Ash, 422 U.S. 66 (197), the Supreme Court refused to imply a private right of action for a violation of 18 U.S.C. § 610. The Court referred to Borak as an instance where there was "a pervasive legislative scheme governing the relationship between the plaintiff class and the defendant class in a particular regard" (422 U.S. at 82). There is no such "pervasive legislative scheme" in the case at bar.

And only last week, theSupreme Court, reversing our Court of Appeals, declined to imply a private right of action under Section 14(e) of the 1934 Act. Piper v. Chris-Craft Industries, Inc., ___ U.S. ___ (February 23, 1977)

The test was whether "the creation by judicial

interpretation of the implied cause of action . . . is necessary to effectuate Congress' goals" (emphasis supplied). This test has already been applied here and no such implication found "necessary".

The Supreme Court determined that plaintiff in Chris-Craft was not an intended beneficiary of the legislation. Here, neither the Trustee nor SIPC could possibly have been meant to be protected by Section 17, if for no other reason because the SIPA legislation was not passed until more than thirty years after Section 17. Additionally, neither the Trustee nor SIPC is an investor.

The case of Lank v. The New York Stock Exchange, ___ F.2d ___ (2d Cir. January 20, 1977), is instructive in this respect. There our Court of Appeals refused to imply a private right of action in the receiver of a member of the Exchange under Section 6 of the 1934 Act. The Court emphasized that brokers were not investors to be protected by the 1934 Act and that Section 6 was not enacted "for the purpose of affording protection to the very members of the stock exchanges whose conduct was being regulated . . .". This analysis seems applicable to the plaintiffs in the case at bar.

Finally, Section 17 does not impose any duty on accountants. It specifically mentions a "national securities exchange", the members thereof, a "registered securities association", brokers, and dealers; it does not mention accountants. While the regulations do contain provisions

respecting an accountant's certificate (17 CFR § 240.17a-5(f)(g)(h)(i)), the oath is only by the broker or dealer (17 CFR § 240.17a-5(b)(2)). Judge Weinfeld discussed the problem in Rothstein v. Seidman & Seidman, 410 F.Supp. 244 (S.D.N.Y. 1976) where he emphasized that a "special instruction" of the New York Stock Exchange laid a duty on its members but not on their accountants.

It is concluded that the Trustee's first claim and the first, second, third, and fourth claims of SIPC must be dismissed for failure to state a claim upon which relief can be granted.

7.

The other five claims of the Trustee are common law claims. The question is whether this Court has any jurisdiction of them. It seems clear that this Court has no jurisdiction.

Pendent jurisdiction will not justify retention of these claims. The federal claim of the Trustee in count one has been dismissed before trial and we are instructed that, in such event, "the State claims should be dismissed as well". United Mine Workers v. Gibbs, 383 U.S. 715, 726 (1966)

The Trustee asserts an independent basis for jurisdiction under the general language of 11 U.S.C. § 11(a)(7).

The situation at bar, however, is controlled by 11 U.S.C. § 46 which provides that a trustee in bankruptcy may sue only in the courts where the bankrupt might have sued.

Section 6(c)(1) of SIPA (15 U.S.C. § 78fff(c)(1)) states in relevant part:

> "Except as inconsistent with the provisions of this chapter and except that in no event shall a plan of reorganization be formulated, a liquidation proceeding shall be conducted in accordance with, and as though it were being conducted under, the provisions of Chapter X and such of the provisions . . . of Chapters I to VII, inclusive, of the Bankruptcy Act as section 502 of Title 11 would make applicable if an order of the court had been entered directing that bankruptcy be proceeded with pursuant to the provisions of such chapters I to VII inclusive . . .".

Section 502 of Title 11 states in relevant part:

> "The provisions of chapter 1 to 7, inclusive of this title shall, insofar as they are not inconsistent or in conflict with the provisions of this chapter, apply in proceedings under this chapter: Provided, however, That section 46 . . . shall not apply in such proceedings unless an order shall be entered directing that bankruptcy be proceeded with pursuant to the provisions of chapters 1 to 7, inclusive." (emphasis in original)

Thus Section 46 of Title 11 is applicable to SIPA liquidations.

The arguments for the Trustee have been considered but cannot be accepted.

It may be mentioned that the Trustee urges a consent by Touche to the jurisdiction of this Court, a consent said to flow from the filing by Touche of a claim for professional services in the Weis liquidation. But the claim filed by Touche in the Weis liquidation was for accounting work in European offices of Weis in late 1972 and early 1973, as well as for a Stock Exchange audit as of April 27, 1973. The claim by the Trustee against Touche does not arise out of any work done by Weis for which Touche filed a claim in the

Weis liquidation. The claims are not "mutual" therefore but are unrelated and the consent of Touche cannot be found. Cherno v. Engine Air Service, Inc., 330 F.2d 191 (2d Cir.1964)

Under 11 U.S.C. § 46 we look to see whether Weis could have sued Touche in this Court. It seems undisputed that the principal place of business of Weis (28 U.S.C. § 1332(c)) was in New York and that members of the Touche firm are citizens of New York. Diversity jurisdiction would not exist of an action by Weis against Touche.

The second, third, fourth, fifth and sixth claims of the Trustee must be dismissed for lack of jurisdiction over the subject matter.

8.

The fifth, sixth, seventh, and eighth claims of SIPC are common law claims. As to these, SIPC argues for diversity jurisdiction on the ground that it should be considered for diversity purposes as a District of Columbia corporation. This argument cannot be accepted.

Under SIPA, SIPC was created as a corporation but it distinctly was not made a District of Columbia corporation. The relevant part of SIPA (15 U.S.C. § 78ccc(a)(3)) provides that SIPC is "subject to" the District of Columbia Nonprofit Corporation Act and has "all the powers" conferred on a nonprofit corporation by that Act. This does not mean, however, that it is a District of Columbia corporation. Note should be taken of the Act of Congress creating The American

National Red Cross. Named persons "are created a body corporate and politic in the District of Columbia" (36 U.S.C. § 1). For diversity purposes, the Red Cross is a citizen of the District of Columbia because the statutory language is specific, in marked contrast to that in SIPA. Patterson v. Amer.Nat. Red Cross, 101 F.Supp. 655 (S.D.Fla. 1951)

SIPC appears to be a federally created corporation which, like the American Legion (36 U.S.C. § 41), the Disabled American Veterans (36 U.S.C. § 90a) and others, is not a citizen of any state for jurisdictional purposes. Hancock Financial Corp. v. Federal Savings etc., 492 F.2d 1325 (9th Cir. 1974); Rice v. Disabled American Veterans, 295 F.Supp. 131 (D.C.D. 1968)

There can be no jurisdiction simply because SIPC was created by Act of Congress because there is no stock ownership in SIPC by the United States. 28 U.S.C. § 1349

Finally, the Trustee is a citizen of New York and is a plaintiff along with SIPC. Partners of Touche, the defendant, are citizens of New York. Thus, there is no complete diversity of citizenship within the rule of Strawbridge v. Curtiss, 3 Cranch 267 (1806).

The fifth, sixth, seventh, and eighth claims of SIPC must be dismissed for lack of jurisdiction over the subject matter.

Settle order and judgment on notice.

Dated: New York, New York
March 1, 1977

Inzer B. Wyatt

INZER B. WYATT
United States District Judge

ORDER AND JUDGMENT APPEALED FROM.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,	76 Civ. 1981 (I.B.W.)
Plaintiffs,	
- against -	
TOUCHE ROSS & CO.,	
Defendant.	

- -x

Defendant having moved, pursuant to Rule 12(b), F.R.Civ.P., for an order dismissing this action, the complaint herein and each so-called cause of action therein alleged, and granting related relief, and the motion having been duly heard by the Court, and the Court having duly rendered its decision, dated March 1, 1977, granting the action as hereinafter provided,

It is hereby ORDERED, ADJUDGED AND DECREED that

1. The first claim (called in the complaint "PLAINTIFF TRUSTEE'S FIRST CAUSE OF ACTION") of plaintiff Edward S. Redington, as Trustee for the liquidation of the business of Weis Securities, Inc. ("Redington"), and the first, second, third and fourth claims (called in the complaint, respectively, "PLAINTIFF SIPC'S FIRST CAUSE OF ACTION", "PLAINTIFF SIPC'S SECOND CAUSE OF ACTION", "PLAINTIFF SIPC'S THIRD CAUSE OF ACTION", and "PLAINTIFF SIPC'S FOURTH CAUSE OF ACTION") of plaintiff Securities Investor Protection Corporation ("SIPC") are dismissed on the merits for failure to state a claim upon which relief can be granted;

2. The second, third, fourth, fifth and sixth claims (called in the complaint, respectively, "PLAINTIFF TRUSTEE'S SECOND CAUSE OF ACTION", "PLAINTIFF TRUSTEE'S THIRD CAUSE OF ACTION", "PLAINTIFF TRUSTEE'S FOURTH CAUSE OF ACTION", "PLAINTIFF TRUSTEE'S FIFTH CAUSE OF ACTION", and "PLAINTIFF TRUSTEE'S SIXTH CAUSE OF ACTION") of plaintiff Redington, and the fifth, sixth, seventh and eighth claims (called in the complaint, respectively, "PLAINTIFF SIPC'S FIFTH CAUSE OF ACTION", "PLAINTIFF SIPC'S SIXTH CAUSE OF ACTION", "PLAINTIFF SIPC'S SEVENTH CAUSE OF ACTION", and "PLAINTIFF SIPC'S EIGHTH CAUSE OF ACTION") of plaintiff SIPC are dismissed for lack of jurisdiction over the subject matter;

3. This action is dismissed, and defendant have judgment against plaintiffs, and each of them, dismissing this action.

New York, New York
March ~~16~~ 15, 1977

Inger B. Wright
J.

JUDGMENT ENTERED - 3/15/77

NOTICE OF APPEAL OF EDWARD S. REDINGTON.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
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S.D. OF N.Y.

- x

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION, :

Plaintiffs, :

- against - :

TOUCHE ROSS & CO., :

Defendant. :

- x

76 Civ. 1981
(I.B.W.)

NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that plaintiff Edward S. Redington hereby appeals to the United States Court of Appeals for the Second Circuit from the Order and Judgment entered in this action on the 15th day of March, 1977.

Dated: New York, New York
April 13, 1977

HUGHES HUBBARD & REED

By _____
A Member of the Firm
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TO:

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NOTICE OF APPEAL OF SECURITIES INVESTOR PROTECTION CORPORATION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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4/14/77 RDM

EDWARD S. REDINGTON, as Trustee for the liquidation of the business of Weis Securities, Inc., and SECURITIES INVESTOR PROTECTION CORPORATION,

Plaintiffs,

-against-

TOUCHE ROSS & CO.,

Defendant.

NOTICE OF APPEAL

76 Civ. 1981 (I.B.W.)

Notice is hereby given that SECURITIES INVESTOR PROTECTION CORPORATION, one of the plaintiffs above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order and judgment, entered in this action on the 15th day of March, 1977, dismissing each and every one of said plaintiff's causes of action and dismissing this action.

Dated: New York, New York
April 14, 1977

HAWKINS, DELAFIELD & WOOD

By _____
A Member of the Firm
Attorneys for Plaintiff-Appellant Securities Investor Protection Corporation
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TO: :LERK OF COURT

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JUN 8 1977

ROSENMAN COLIN FREUND LEWIS & COHEN
ATTORNEYS FOR
Defendant